

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH
WELLNESS SERVICES FOR STATE HEALTH BENEFIT PLAN MEMBERSHIP**

IMPORTANT INFORMATION ABOUT THIS DOCUMENT AND ITS USE

The selected Bidder(s) who will provide wellness services for the State Health Benefit Plan membership and will be expected to enter into a contract with DCH that is substantially the same as this contract. However, DCH reserves the right to change any portion of this contract and Bidder's chart of exceptions in no way creates a binding contract with DCH. In no event is a Bidder to submit its own standard contract terms and conditions as a response to the RFA. The Bidder must submit with its approach any exceptions and exact contract deviations that it wishes to negotiate; however, many clauses are required by Georgia state law or DCH policy and cannot be negotiated.

All Bidder exceptions must be set forth in detail in the table below and in the format below. Bidders shall provide the table below in PDF format and in Word 97 format. Any sections not addressed will be deemed acceptable to the Bidder. Contract exceptions and proposed language shall be set forth in this manner so that all Bidders' responses may be compared and considered during evaluation, and to ensure that DCH and Bidder may complete contract negotiations within the five day contract negotiation period.

Every change to the contract must be labeled with the exact sub-section number, the Bidder's reason for requesting the change, the reason why Bidder's proposed language meets the goal of the original language (or why Bidder believes the change is appropriate) and must include the original sub-section, with the Bidder's changes clearly visible (preferably in Word tracked changes).

Responses to the RFA that do not include proposed contract changes in the required format (or a statement that all contract terms are acceptable, with no changes) may not be considered and may be returned without review.

CONTRACT EXCEPTIONS AND PROPOSED CHANGES EXAMPLE

Sub-section number	Reason for requesting change	Explanation of why proposed change addresses goal of original language	Proposed alternative or additional language, in tracked changes
35.A	We need one additional day of notice before DCH assigns the contract to another agency	11 Calendar Days provides sufficient notice	A. The rights of DCH under this Contract may be assigned to any other agency of the State of Georgia, with eleven (11) Calendar Days prior notice to Contractor.

LIST OF EXHIBITS AND ATTACHMENTS TO CONTRACT

Exhibit 1: Request For Approach
Exhibit 2: Contractor's Approach
Exhibit 3: Administrative Fees and Services
Exhibit 4: Performance Guarantees
Exhibit 5: Disaster Recovery Plan
Exhibit 6: Irrevocable Letter of Credit
Exhibit 7: Intentionally Reserved
Exhibit 8: Information Security

Attachment A: Drug Free Workplace Certificate
Attachment B: Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters
Attachment C: Nonprofit Organization Disclosure Form
Attachment D: Confidentiality Statement For Safeguarding Information
Attachment E: Business Associate Agreement
Attachment F: Vendor Lobbyist Disclosure and Registration Certification Form
Attachment G: Statement of Ethics
Attachment H: DCH Ethics in Procurement Policy
Attachment I: DCH Code of Ethics and Conflict of Interest Policy

CONTRACT BETWEEN

THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH

AND

[INSERT CONTRACTOR'S NAME]

FOR

**WELLNESS SERVICES FOR STATE HEALTH BENEFIT PLAN
MEMBERSHIP**

Contract No. XXXX

TABLE OF CONTENTS

<u>TITLE</u>	<u>PAGE</u>
1. DEFINITIONS AND TERMS	2
2. SCOPE OF SERVICE	9
3. DCH RESPONSIBILITIES	9
4. GENERAL CONTRACTOR RESPONSIBILITIES	12
5. SPECIFIC CONTRACTOR RESPONSIBILITIES AND DELIVERABLES	13
6. PAYMENT OF INCENTIVES	24
7. DELIVERABLES	25
8. TERM OF CONTRACT	25
9. PAYMENT FOR SERVICES	26
10. FUNDING	27
11. PAYMENT OF TAXES	27
12. RELATIONSHIP OF PARTIES	27
13. INSPECTION OF WORK	28
14. STATE PROPERTY	28
15. OWNERSHIP AND USE OF DATA AND RELATED MATTERS, AND ACCEPTANCE OF SYSTEM CHANGES	28
16. CONTRACTOR STAFFING	33
17. CRIMINAL BACKGROUND, EXCLUSIONS AND DEBARMENT	36
18. SUBCONTRACTS	37
19. TRAVEL EXPENSES AND USE OF STATE VEHICLES	38

20. LICENSE, CERTIFICATE, AND PERMIT REQUIREMENTS	39
21. RISK OF LOSS AND REPRESENTATIONS	40
22. PROHIBITION OF GRATUITIES AND LOBBYIST DISCLOSURES	40
23. RECORDS REQUIREMENTS	41
24. CONFIDENTIALITY AND SYSTEM SECURITY REQUIREMENTS	42
25. TERMINATION OF CONTRACT	43
26. UNSATISFACTORY PERFORMANCE AND DAMAGES	45
27. INDEMNIFICATION	48
28. INSURANCE	49
29. IRREVOCABLE LETTER OF CREDIT	50
30. COMPLIANCE WITH ALL LAWS	50
31. CONFLICT RESOLUTION	52
32. CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE	53
33. NOTICE	53
34. MISCELLANEOUS	54
35. AMENDMENT IN WRITING	62
36. CONTRACT ASSIGNMENT	62
37. SEVERABILITY	63
38. PROHIBITION OF CERTAIN CONTRACT PROVISIONS	63
39. COUNTERPARTS	63
40. ENTIRE CONTRACT	63
SIGNATURE PAGE	64

THIS CONTRACT is made and entered into by and between the Georgia Department of Community Health (“DCH”) and _____ (“Contractor”), and is effective on the date on which it is signed by both of them (the “Effective Date”).

RECITALS

WHEREAS, DCH is responsible for health care policy, purchasing, planning and regulation pursuant to the Official Code of Georgia Annotated (O.C.G.A.) § 31-2-1 *et seq.*;

WHEREAS, DCH has been established and is responsible for the administration of the State Health Benefit Plan (the “SHBP”) pursuant to the authority granted in O.C.G.A. §§ 45-18-1 *et seq.*, §§ 20-2-880 *et seq.* and §§ 20-2-910 *et seq.*;

WHEREAS, DCH provides health benefits under the SHBP for certain current and former State and public employees, and, in most cases, their dependents;

WHEREAS, the provision of healthcare services to be performed for the SHBP through this Contract are exempt from the State Purchasing Act pursuant to the Official Code of Georgia Annotated (“O.C.G.A.”) §§ 31-2-1, 45-18-2, 45-18-3, 45-18-6, DCH has contracted directly with Contractor;

WHEREAS, DCH had caused Request for Approach (“RFA”) Number _____, which is attached to this Contract as Exhibit 1 and expressly incorporated into this Contract as if completely restated, that was issued through DCH for an organization to provide wellness services for the State Health Benefit Plan membership;

WHEREAS, DCH has received from Contractor an Approach in response to the RFA (“Contractor’s Approach” or “Approach”), which is attached to this Contract as Exhibit 2 and expressly incorporated into this Contract as if completely restated;

WHEREAS, Contractor, including its Subcontractors, represents that it has the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in this Contract in an efficient, cost-effective, professional-manner, with a high degree of quality and responsiveness and has performed similar services for other public and private entities;

WHEREAS, DCH and Contractor are both committed to the delivery of quality health care services in an efficient and effective manner, recognizing the need to control and contain costs, and recognizing the need to maintain and improve the quality of health care;

WHEREAS, Contractor has thoroughly reviewed, analyzed and understood the RFA;

WHEREAS, Contractor has timely raised all questions or objections to the RFA and received satisfactory answers or responses;

WHEREAS, Contractor has had the opportunity to review and fully understand the DCH's operating environment for the activities that are the subject of this RFA and Contract and Contractor understands the needs and requirements of DCH;

WHEREAS, DCH accepts Contractor's Approach except as expressly stated otherwise in this Contract; and

WHEREAS, DCH and Contractor desire to set forth the terms and conditions under which Contractor will provide wellness services to the SHBP membership.

NOW THEREFORE, for and in consideration of the foregoing Recitals and the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCH and Contractor (each individually a "Party" and collectively the "Parties") hereby agree as follows:

1. DEFINITIONS AND TERMS

Whenever capitalized in this Contract, the following terms have the respective meaning set forth below or, if not set forth below, the meaning set forth in the RFA, unless the context clearly requires otherwise. In the event of a conflict or disagreement among the Parties as to the meaning of a capitalized term, DCH's interpretation shall control.

- 1.1 **"Acceptance"** means a notice from DCH to Contractor that a Deliverable has conformed to its applicable Acceptance Criteria in accordance with the process described in Section 15.F, *System Changes*.
- 1.2 **"Acceptance Criteria"** means the Specifications against which each Deliverable shall be evaluated in accordance with Section 15.F, *System Changes*.
- 1.3 **"Acceptance Tests"** means the tests or reviews that are performed by DCH to determine there are no Deficiencies in the Deliverables and that must be satisfied before Acceptance can occur as set forth in Section 15.F, *System Changes*.
- 1.4 **"Account Manager or Account Director"** means the individual employed full-time by (and is legally empowered by) Contractor to oversee the management and coordination of DCH's SHBP account.
- 1.5 **"Administrative Services" or "Wellness Services"** means all services that Contractor provides pursuant to this Contract, either directly or through Subcontractors.
- 1.6 **"Administrative Services Fees"** means the schedule of monthly payments from DCH to Contractor based on the respective monthly enrollment counts of Employees enrolled in Plan Options, and any other fees for Administrative Services related to Plan Options as set forth in Exhibit 3, *Administrative Fees and Services*.

- 1.7 **“Behavioral Health/Substance Abuse Management (BHM)”** means the provision of inpatient and/or or outpatient mental health and substance abuse treatment and services for Members.
- 1.8 **“Business Day(s)”** means every day except Saturdays, Sundays, and those holidays designated by law pursuant to O.C.G.A. § 1-4-1.
- 1.9 **“Calendar Day(s)”** means any of the seven days of the week.
- 1.10 **“Case Management”** means a collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet a Member’s health needs. It uses communication and available resources to promote quality, cost-effective outcomes and maximize benefits. It is distinguished from Utilization Management in that it is voluntary, and it is distinguished from Disease Management by its intensity and focus on any disease(s) and/or condition(s) the Member may have.
- 1.11 **“Center of Excellence”** means a team, a shared facility or a healthcare provider that provides leadership, best practices, research, support and/or training in a particular alternative medical delivery setting. A Center of Excellence is recognized in the medical community as the most expert and cost efficient, producing the best outcomes for high quality health care in one or more specialties.
- 1.12 **“Confirmation”** means DCH’s receipt of notice from Contractor that Contractor has, as applicable: completed a Deliverable in accordance with its Acceptance Criteria or pre-tested a Deliverable for compliance with the Specifications; and confirmed the Deliverable is ready for applicable Acceptance Tests.
- 1.13 **“Contract”** means this instrument and all Exhibits and Attachments to this instrument, which are incorporated in this instrument by reference as if fully restated. If provisions in the Contract conflict, the DCH Director of Contracts Administration shall determine which provisions control, following this general order of preference: this instrument; Exhibit 3, *Administrative Fees and Services*; Exhibit 4, *Performance Guarantees*; Attachment E, *Business Associate Agreement*; Exhibit 8, *Information Security*; Exhibit 1, *Request for Approach*; Exhibit 2, *Contractor’s Approach*, and all other Exhibits and Attachments.
- 1.14 **“Corrective Action Plan”** means a detailed written plan submitted by Contractor to DCH and approved by DCH in writing as a method for Contractor to remedy or resolve Contractor’s unsatisfactory performance.
- 1.15 **“DCH Content”** means any materials provided by DCH to Contractor in order for Contractor to provide the Services. DCH Content includes, but is not limited to, images, photographs, illustrations, graphics, audio clips, video clips and text such as operating procedures, scripts, or any other form of text.

- 1.16 **“DCH Data”** means all information provided to Contractor by DCH or Members or SHBP Vendors as a result of this Contract, including, but not limited to DCH Content, eligibility information, Member specific information, claims information, documents, messages (verbal or electronic), reports, or agendas and other documentation related to meetings involving or arising out of this Contract.
- 1.17 **“DCH Program Manager”** means the DCH employee identified as Program Manager in Section 33, *Notice*.
- 1.18 **“Dedicated”** means Contractor’s staff members who are solely assigned to perform Services in furtherance of this Contract, which means the Contractor does not assign them to work for any other client or customer.
- 1.19 **“Deficiency”** means a failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes it not to conform to its Specifications. Also referred to as a problem, defect, issue or error in the RFA.
- 1.20 **“Deliverable”** is a specific task or product, such as a written product, report, system test, audit or meeting that must be accomplished by Contractor (either independently or in concert with DCH or third parties) during the course of Contractor’s performance under this Contract by a deadline specified in the Contract or the DCH-approved Implementation Plan.
- 1.21 **“Designated”** means Contractor’s staff members who are assigned to perform Services in furtherance of this Contract, but may also be assigned by Contractor to work for other clients or customers.
- 1.22 **“Disease Management (DM)”** means intervention and educational programs designed for individuals with chronic diseases which are intended to prevent recurrence of symptoms, maintain high quality of life, and prevent or reduce the need for medical resources by using an integrated, comprehensive approach to health care.
- 1.23 **“Eligible Member” or “Member”** means all Employees and their dependents who are currently enrolled in a Plan Option.
- 1.24 **“Employee”** means an individual who is eligible to enroll in the SHBP due to his or her current or former employment with an Employing Entity, or as a result of applicable law, and who is currently enrolled in a Plan Option.
- 1.25 **“Employing Entity”** means an employer that offers the SHBP to employees, or to employees and former employees.

- 1.26 **“Health Information Technology for Economic and Clinical Health (HITECH) Act”** means Title XIII of Division A and Title IV of Division B of ARRA.
- 1.27 **“Health Insurance Portability and Accountability Act of 1996 (HIPAA)”** means 42 USC 1302, et seq. and the regulations promulgated thereunder at 45 C.F.R. Parts 160, 162 and 164.
- 1.28 **“Health Reimbursement Arrangement (HRA)”** means an account set up on behalf of the Employee in accordance with applicable Internal Revenue Code requirements, under which expenses associated with Covered Services for which Claims have been submitted under any of the Plan Options are reimbursed. The HRA accounts generally are integrated with the applicable Plan Option, but there may be instances in which a standalone HRA exists as the result of a residual HRA balance upon termination of coverage under a Plan Option.
- 1.29 **“Implementation”** means preparation of readiness to provide the Administrative Services. Tasks associated with Implementation are set forth in an Implementation Plan.
- 1.30 **“Implementation Plan”** means the overall plan of activities for the Contract, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard to the SHBP, as submitted with the Approach and as updated in accordance with Section 3.6 of this Contract. The Implementation Plan shall be incorporated herein, and each revised Implementation Plan shall be incorporated herein upon its acceptance by DCH.
- 1.31 **“Key Staff”** means those individuals listed as key staff in Exhibit 1, *Request for Approach*.
- 1.32 **“Member” or “Eligible Member”** means all Employees and their dependents who are currently enrolled in a Plan Option.
- 1.33 **“Member Services”** means a customer service unit responsible for responding to Members’ questions, comments, and inquiries in accordance with DCH approved policies and procedures.
- 1.34 **“Medically Appropriate” or “Medically Necessary”** means care that meets the guidelines for medical appropriateness or medical necessity set forth in the Plan Documents.
- 1.35 **“Medical Management Vendor (MM Vendor)”** means the entity with whom DCH has contracted to provide medical management services. Medical management services include but are not limited to Case Management, 24 hour Nurse Line, Disease Management, Behavioral Health/Substance Abuse Management, and Utilization Management.

- 1.36 **“Member Services”** means a customer service unit responsible for responding to Eligible Members’ questions, comments, and inquiries as prescribed by the SHBP approved policies and procedures.
- 1.37 **“Nurse Line”** means a 24-hour, 7 days a week nurse advice line, staffed with licensed registered nurses who access a health information protocol system to provide non-diagnostic assessments, triage, health information, education, home treatment options, and authorization of referrals to emergency room, urgent care facilities, and/or physician offices.
- 1.38 **“Performance Standards”** means the standards set forth in the Performance Guarantees attached at Exhibit 4.
- 1.39 **“Pharmacy Drug Benefit Management Vendor (PBM Vendor)”** means the entity with whom DCH has contracted to administer prescription drug benefits.
- 1.40 **“Plan”** means the State Health Benefit Plan (SHBP), as further defined below.
- 1.41 **“Plan Documents”** means the documents that contain the terms and conditions of the Plan Options, as determined and developed during Implementation. These include the State statutes and regulations that govern the SHBP, policies and procedures of DCH’s SHBP Division, and clinical guidelines of SHBP Vendors that are approved in writing by the DCH Program Manager during Implementation, and reimbursement guidelines of SHBP Vendors that are approved in writing by the DCH Program Manager during Implementation, written requirements of any programs established by the Wellness Vendor, Employee contribution rates approved by DCH’s governing board, and the Summary Plan Description and other summaries of benefits approved in writing by the DCH Program Manager. In the event of ambiguity or conflict among the terms set forth in these documents, DCH shall interpret the terms in accordance with SHBP Regulation 111-4-1-.10 and applicable federal law.
- 1.42 **“Plan Option(s)”** means the self-insured health plan options of the SHBP. The Plan Options currently include the (i) Preferred Provider Organization/HRA option, (ii) High Deductible Health Plan option, (iii) Health Maintenance Organization option, and (iv) to the extent applicable, any residual HRA balance upon termination of coverage under any of these Plan Options, if applicable.
- 1.43 **“Provider”** means a physician, health care professional or health care facility licensed or accredited as required by state law.
- 1.44 **“Quality Assurance Program”** is a program designed to (i) ensure accurate administration of wellness programs, including accounting for new wellness programs and changes to wellness programs during the Term of the Contract, and (ii) evaluate data to determine possible improvements in benefit design and/or ways to ensure maximum patient outcomes.

- 1.45 **“Quality Management” (“QM”)** means a systematic, data-driven effort to assess, monitor, evaluate, report, and compare outcomes on all health care services and functions using appropriate quality indicators and tools, as well as, Corrective Action Plans when errors and/or deficiencies are identified.
- 1.46 **“Software”** means all computer instructions or data and any updates thereto, including executable computer program code together with the associated data files, data structures, and databases within the control of and used by Contractor to administer the Plan Options and programs described in this Contract.
- 1.47 **“Specifications”** means the technical and other written specifications that define the requirements and Acceptance Criteria, as described in the RFA, the Contractor’s Approach, subsequent Deliverables which have received Acceptance, and the Documentation. Such Specifications shall include and be in compliance with all applicable State and federal policies, laws, regulations, and technical standards. The Specifications are, by this reference, made a part of this Contract, as though completely set forth herein.
- 1.48 **“State Health Benefit Plan” (“SHBP”) or “Plan”** is comprised of three health insurance plans established by Georgia law: 1) a plan for State employees (O.C.G.A. §45-18-2), 2) a plan for teachers (O.C.G.A. §20-2-891), and 3) a plan for non-certified public school employees (O.C.G.A. §20-2-911). Currently, benefit options are the same under all three plans and they are usually referred to together as the State Health Benefit Plan. The SHBP includes the Plan Options.
- 1.49 **“SHBP Vendors”** means the TPA Vendor(s), the Medical Management Vendor(s), the Wellness Vendor(s) and the PBM Vendor(s).
- 1.50 **“Subcontractor”** means a person, partnership, or company, not in the employment of Contractor, which is performing Administrative Services under this Contract under a separate agreement with or on behalf of Contractor. Subcontractor includes affiliates (entities that control, are controlled by, or are under common control with the Contractor) of Contractor that perform Services under this Contract.
- 1.51 **“Summary Plan Description”** means a booklet that contains information regarding Member eligibility requirements, and summary descriptions of covered benefits and exclusions under the Plan Options, including wellness programs and requirements for additional benefits related to wellness programs.
- 1.52 **“Systems”** means Contractor’s information systems that it makes available to DCH to access and facilitate the transfer of information in conjunction with this Contract or that otherwise support functions associated with this Contract.

- 1.53 **“TPA Vendor”** means an entity contracted by DCH to provide third party administration services for Plan Options and to provide Medicare Advantage Plans.
- 1.54 **“Utilization Management Program (UM Program)”** means a service(s) and/or utilization review service(s) performed through programs offered by Medical Management Vendor which seek to assure that Covered Services provided to Members are in accordance with Plan Option provisions and appropriate under the standards and requirements established by the Medical Management Vendor.
- 1.55 **“Work Product”** means all Deliverables, records, telephone call recordings, reports, analyses, communications with Members, claims information, any software or hardware or other equipment upgrades or enhancements requested by and made for DCH’s sole use, meeting agendas and other documentation, data and other related materials (whether electronic, hardcopy or otherwise) either:
- a. prepared by Contractor or created by Contractor based upon and using information supplied by DCH or Members, or supplied by Providers as a result of their treatment of Members, or supplied by SHBP Vendors as a result of the SHBP Vendors’ provision of services for the Plan; or
 - b. prepared or created by Contractor for DCH, including, but not limited to, all reports demonstrating the extent to which Contractor met Performance Standards and Deliverables set forth in the Contract, and all written or recorded communications between Contractor and DCH related to the Services.
- 1.56 **“Wellness Vendor”** means an entity with which DCH has contracted to provide wellness and prevention programs.
- 1.57 **“Wellness Initiatives”** mean communications or pilot programs, including, but not limited to worksite wellness programs, designed to increase awareness of actions that promote achievement and maintenance of optimal health or prevent disease or worsening of existing medical conditions, or to test the effectiveness of such communications or pilot programs.
- 1.58 **“Wellness Program”** means a program designed to encourage SHBP Members to engage in actions that promote achievement and maintenance of optimal health and prevent disease or worsening of existing medical conditions, which program is described in writing and contains specific requirements and incentives for satisfying the requirements or dis-incentives for failing to satisfy the requirements.

2. **SCOPE OF SERVICE**

- A. The purpose of this Contract is the provision of Administrative Services for Wellness Programs and Wellness Initiatives for Members. Subject to the terms and conditions set forth herein, DCH retains Contractor to furnish all of the goods, services, and other Deliverables required by the Contract.
- B. Contractor shall act as an independent contractor in the performance of its duties under this Contract. DCH is the administrator of the SHBP and shall retain final authority and responsibility for the operation of the SHBP, for the determination of which laws, regulations, policies and procedures apply to the SHBP, which documents are Plan Documents, and for the proper interpretation of Plan Documents, eligibility requirements, rules, policies and procedures that apply to the SHBP. Contractor may act on behalf of DCH in connection with SHBP only to the extent expressly stated in this Contract. In performing its duties under this Contract, Contractor shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and shall be held to such standard in any conflict arising between the Parties.
- C. DCH is the sponsor of the SHBP and retains sole and absolute authority to design, amend, terminate or modify, in whole or in part, any portion of the SHBP, including, but not limited to, any Wellness Program or Wellness Initiative associated with the SHBP, in accordance with applicable law.
- D. Additionally, the Parties agree that DCH shall not pay or otherwise compensate Contractor for any services, goods, or Deliverables outside of the Services described in the Contract. In the event of a dispute regarding whether a task, good, or Deliverable is required by this Contract, the Parties will attempt to reach a mutually agreeable solution. If the Parties fail to reach a mutual agreeable solution, Section 31, ***Conflict Resolution***, of this Contract shall control, govern, and not be subject to appeal.
- E. In event of a conflict in language between the various documents incorporated by reference into this Contract (other than the Contract itself), the order of interpretation set forth in the definition of Contract shall control.

3. **DCH RESPONSIBILITIES**

DCH shall complete the following tasks and actions:

- 3.1 **Eligibility Determinations**. Make all determinations related to eligibility for SHBP coverage, and administer and make final decisions with respect to all appeals related to eligibility and enrollment.

- 3.2 Administrative Fees. Pay to Contractor the monthly Administrative Fees as set forth in Exhibit 3, in accordance with Section 9, ***Payment for Services***, Section 26, ***Unsatisfactory Performance and Damages***, and Exhibit 4, ***Performance Guarantees***.
- 3.3 Use of Name/Trademarks/Logos for Marketing Purposes. DCH shall permit Contractor to use DCH name, trademarks and logos for the limited purpose of informing Eligible Members of the Wellness Services under the Plan Options. Additionally, Contractor's marketing materials and any electronic or Internet publication of such materials displaying the names, trademarks and/or logos of DCH shall be approved by the SHBP Division Chief or her designee, as applicable, in writing prior to distribution or other release. Any other desired use or dissemination by Contractor of the name of DCH or the SHBP in any connection with the services provided by Contractor shall require the prior written consent of DCH and the SHBP, as applicable. Contractor shall immediately cease to use DCH name, trademark and/or logo upon receipt of a communication from DCH directing Contractor to cease and desist from using the same or upon the termination of this contract. Contractor's logos shall not be used by DCH or the SHBP without the prior written consent of Contractor.
- 3.4 Review and Approval of Implementation Plan. Contractor shall provide a detailed workplan for Implementation of the Administrative Services described in this Contract ("Implementation Plan"). Contractor shall submit the Implementation Plan within fifteen (15) Calendar Days of the Effective Date. At a minimum, the Implementation Plan must include the information specified in Paragraph 36(a)-(f) of the RFA and proposed deadlines for delivery, acceptance, and other activities related to any Deliverables. DCH shall review and accept the Implementation Plan if it meets Contract requirements, including but not limited to Contractor and DCH team assignments. DCH shall provide oversight for the Implementation team. The schedule of deadlines in the Implementation Plan shall not change as a result of time required by Contractor to correct deficiencies, unless otherwise agreed beforehand in writing by the DCH Program Manager. However, the schedule may, in DCH's discretion, be extended on a day-to-day basis to the extent that DCH's review of a Deliverable and review of corrections of deficiencies is longer than described in the Implementation Plan. Contractor shall update the Implementation Plan regularly (no less than quarterly) and as otherwise necessary throughout the Implementation for each plan year to accurately reflect the status of activities, tasks, events, Services and projected schedule therefor. Contractor will present the updated Implementation Plan at a time agreed to by the parties in writing, and the updated Implementation Plan will highlight changes made from the prior Implementation Plan. Any such update changes must be approved in writing by the DCH Project Manager prior to their final incorporation into the Implementation Plan. Any Implementation Plan change request which would result in an increased cost to DCH must be prepared as an amendment to the Contract. The Implementation Plan progress updates shall allow adequate time, in DCH's reasonable judgment, for DCH to review and

comment on the updates, as well as any new or modified Deliverables, and revision or correction of Deliverables by Contractor. However, unless otherwise specifically agreed to in writing, DCH's agreement on a change to the Implementation Plan will not relieve Contractor of liability, including but not limited to liquidated damages, from failures to perform its obligations as required herein. The Implementation Plan updates shall be incorporated into the Contract upon acceptance by DCH.

- 3.5 Communication Materials. DCH shall review and approve all communication materials including letters, brochures and informational mailings and any other documents that Members and Providers at large shall receive prior to their being sent to Members on behalf of DCH.
- 3.6 Electronic Communications. DCH shall review and approve the content of any web-site information, telephone recorded greetings and messaging (including on-hold messaging), telephone prompts, and automated voice response system(s) prior to their being made available exclusively or uniquely for Members on behalf of DCH.. Contractor shall not make changes to the website or any of the greetings and systems described above without written approval of DCH. However, in the event of unexpected or urgent changes, Contractor will provide DCH with the most advanced notice possible and provide DCH with the opportunity to review and make any necessary changes as soon as possible after implementation of the changes.
- 3.7 Readiness Review. At least sixty (60) Calendar Days prior to January 1, 2014, DCH will conduct a readiness review of Contractor, including an on-site review of Contractor's facilities. Contractor shall participate in all readiness review activities conducted by DCH to ensure Contractor's operational readiness. DCH will provide Contractor a summary of findings as well as areas requiring corrective action.
- 3.8 Member Eligibility. DCH shall provide Contractor with the most current and complete set of Member eligibility data and assist Contractor with interfaces when necessary.
- 3.9 Recommended Design of Wellness Programs. DCH and Contractor will develop recommended terms and conditions of Wellness Programs, including, but not limited to requirements, benefits, incentives, exclusions, limits, cost-sharing elements, and all terms and conditions necessary for compliance with applicable law, during Implementation. DCH and Contractor will develop modifications to the terms and conditions of Wellness Programs as needed, but at least as frequently as once per year, so that such modifications are available for presentation to senior DCH leadership by July 1. DCH has final decision-making authority with respect to all terms and conditions.

4. **GENERAL CONTRACTOR RESPONSIBILITIES**

- 4.1 General Legal Compliance. As of the Effective Date, and at all times throughout the Term of this Contract, Contractor shall be and remain in compliance with all applicable laws, as further described in Section 30, ***Compliance with all Laws.***
- 4.2 Change in Corporate Status or Ownership Obligations.
 - 4.2.1 Contractor shall immediately notify DCH of any of the following changes that apply to Contractor:
 - 4.2.1.1 Change in business address, telephone number, facsimile number, or e-mail address;
 - 4.2.1.2 Change in corporate status or nature, which shall not occur without DCH's prior written consent;
 - 4.2.1.3 Change in business location;
 - 4.2.1.4 Change in solvency;
 - 4.2.1.5 Change in corporate officers, executive employees, or corporate structure;
 - 4.2.1.6 Material change in ownership (more than 5%) or control;
 - 4.2.1.7 Change in federal employee identification number or federal tax identification number; and
 - 4.2.1.8 Change in Long-Term Credit Rating or Short-Term Credit Rating as measured by Standard & Poor's Rating Services.
 - 4.2.2 Contractor shall immediately notify DCH of any of the following changes that apply to Subcontractors:
 - 4.2.2.1 Change in corporate status or nature;
 - 4.2.2.2 Change in solvency; and
 - 4.2.2.3 Material change in ownership (more than 10%).
 - 4.2.3 Contractor shall not, without the prior written consent of DCH, take the following actions:
 - 4.2.3.1 Change its legal status;

4.2.3.2 Change its legal structure; or

4.2.3.3 Sell, transfer, convey or assign more than a 10% interest in Contractor.

4.2.4 Should DCH not consent to any of the actions set forth in Section 4.2.3 and Contractor desires to proceed with such action, then DCH may, at its option, elect to terminate this Contract at such date as determined by DCH.

4.3 Compliance with Contractor's Approach. Contractor shall comply fully with its Approach in response to the RFA, except as expressly described in this Contract.

5. **SPECIFIC CONTRACTOR RESPONSIBILITIES AND DELIVERABLES**

Contractor shall perform and complete the following tasks, obligations and responsibilities:

5.1 Wellness Services. Contractor shall provide Administrative Services for Wellness Programs and Wellness Initiatives, which shall promote the achievement of statewide and targeted health and wellness goals for all Members, and will include, but not be limited to, personal health assessments (PHA), tobacco cessation programs, nutritional and weight management education, cancer screenings, childhood obesity, worksite wellness, and DCH approved incentives to engage participation.

5.2 Account Services. Account services are set forth in Section 16, ***Contractor Staffing***.

5.3 Performance Guarantees. Contractor shall satisfy the Performance Standards set forth in Exhibit 4, ***Performance Guarantees***, as well as any reporting obligations related to the Performance Guarantees. The actions described in Exhibit 4 shall be Deliverables. If Contractor continually fails to fulfill the terms of its Performance Guarantees, DCH may, in its sole discretion, delay all payments until Contractor achieves the Performance Standards or exercise any other remedies set forth in this Contract.

5.4 Outcome and Goal Based Approach. Contractor shall provide an outcome and goal based approach, which includes the following:

5.4.1 Contractor shall provide an allowance of one million dollars (\$1,000,000) annually (the "Wellness Promotion Account"), and such other allowance as is set forth in Exhibit 3, ***Administrative Services and Fees***, to fund Member outreach and communications, health challenges, targeted interventions, promotions, incentives, and other Wellness Initiatives.

- 5.4.2 Contractor shall develop and administer programs to incent Members to participate in the Wellness Program and in Wellness Initiatives to achieve health improvements that that can be measured and tracked through goal-based outcomes. Incentives may include, but are not limited to, monthly premium reductions, copay waivers, and Health Reimbursement Arrangement credits.
- 5.4.3 Contractor shall provide programs to encourage Providers to support Wellness Programs and Wellness Initiatives, including outreach programs directly to the Provider community, the TPA Vendor's Network Providers, the PBM Vendor's Network Pharmacies, and the Medical Management Vendor.
- 5.4.4 Contractor shall work with SHBP to develop metrics to measure program success and benchmark against nationally recognized industry metrics, as mutually agreed upon by SHBP. Contractor must compare performance against recognized standards, and exceed those standards.
- 5.4.5 Contractor shall provide metrics for measuring success in improving Members' health in terms of:
 - 5.4.5.1 Reduction of tobacco surcharge payments;
 - 5.4.5.2 Reduction of obesity and BMI (adult and child);
 - 5.4.5.3 Reduction of high blood pressure;
 - 5.4.5.4 Reduction of high cholesterol;
 - 5.4.5.5 Increasing participation in cancer screenings (i.e., colorectal cancer, breast cancer, cervical cancer);
 - 5.4.5.6 Participation in Personal Health Assessments; and
 - 5.4.5.7 Others, as agreed to by Contractor and DCH.

- 5.5 Plan Documents. During Implementation, Contractor shall provide DCH written requirements and procedures for Wellness Programs, and identify any discrepancies between those documents and the prior year's SPDs. DCH and Contractor will identify all documents that will be followed when administering the Wellness Program, and these documents will be approved in writing by the Program Manager as the Wellness Program components of the Plan Documents. Once approved by the Program Manager, Contractor shall follow these Wellness Program components of the Plan Documents when administering the Wellness Program and resolving appeals. Contractor shall seek written guidance of DCH whenever interpretation of Plan Documents is required, and shall seek written approval of DCH before following any document other than the Plan Documents

when processing Member information or resolving appeals. In the event that DCH changes the requirements of a Wellness Program, the revised requirements shall become part of the Plan Documents and Contractor shall follow the revised requirements of the Wellness Program when processing Member information and resolving appeals.

- 5.5.1 Contractor shall produce a Wellness Program description for each Plan Option, or, at the request of DCH, will provide information and necessary support for DCH to produce such a description in the SPD booklet. In addition, Contractor shall provide the appropriate SPD to any Member upon request.
- 5.5.2 Contractor shall provide to DCH for review and approval the Wellness Program descriptions or, if requested by DCH, the recommended language for the SPD booklets for each Plan Option within ninety (90) Calendar Days of the Effective Date. Thereafter, the Wellness Plan description or recommended language must be provided to DCH for review and approval, rejection or modification at least ninety (90) Calendar Days prior to publication and distribution each calendar year.
- 5.5.3 Contractor shall make the Wellness Program description available via electronic means to the Members.
- 5.5.4 Contractor shall work with SHBP to create an innovative partnership directed toward reducing childhood obesity in the SHBP membership.
- 5.6 Telephonic and Online Wellness Coaching. Contractor shall provide an engagement-building methodology to build engagement throughout the life of this Contract with Members through telephonic and online coaching.
 - 5.6.1 Contractor shall maintain methods for engaging Members who are difficult to reach by telephone due to incomplete or inaccurate contact data or due to circumstances where a Member does not have regular access to a telephone or computer.
 - 5.6.2 Contractor shall provide educational resources and programs whereby coaches promote wellness strategies and emphasize personal responsibility for achieving wellness.
 - 5.6.3 Contractor's coaching staff must be appropriately licensed or certified.
 - 5.6.4 Contractor shall provide DCH employees with remote, view-only access to the coaches' notes and the System used by coaches.

- 5.7. Web Portal. Contractor shall develop, maintain, and support a web portal that is accessible by SHBP and its Members. Contractor shall provide technical support for Members 24 hours a day, seven days per week.
- 5.7.1 The web portal will provide tools and services for Members including, but not limited to: Personal Health Assessments, wellness tools and trackers, and health promotion and health education tools. Members will have the ability to access the services and tools via paper rather than through the portal if requested by Members without internet access.
- 5.7.2 Contractor shall use SHBP's logo throughout the portal and agrees to customize materials as requested by SHBP.
- 5.7.3 Contractor shall establish back-up plans for handling periods of expected high rates of utilization of its web portal.
- 5.7.4 Contractor shall have website functionality that, at a minimum, replicates the functionality described as part of RFA paragraph 56.
- 5.8 Online Health Modules. Contractor will develop, in consultation with DCH, online educational modules. Such modules will be customized for SHBP. Contractor shall make such modules available in paper form if requested by Members without internet access.
- 5.8.1 Contractor shall provide DCH with a complete educational module course description that includes content, course descriptions, learning aids, interactive exercises, and the technology used to access the modules.
- 5.8.2 Contractor shall report to DCH its ability to support existing and emerging technologies as requested by DCH.
- 5.9 Online Health Tracker. Contractor shall maintain an online health tracker to measure items such as: nutrition, exercise frequency/fitness regimen, weight control, biometric measurements, and data regarding frequency of access to preventive health screenings.
- 5.10 Biometric Screening. Contractor shall provide biometric screening services as described in the Response to FRA paragraphs 66-69.
- 5.11 Health Promotion Materials. Contractor shall produce and make available customized health promotion materials that are co-branded with SHBP's logo as requested by DCH. All such materials shall be timely submitted for SHBP's review and approval prior to distribution.
- 5.12 Monitoring and Tracking. Contractor shall maintain tools for tracking, as approved by SHBP, to track Members' completion of individual health activities.

The tracking tool will have the ability to provide information to Members about their progress in completing wellness activities. The tracking tool will provide Members with the ability to print a report documenting their health progress information. Contractor will provide monthly tracking tool reports to SHBP. Contractor shall provide tracking reports and/or activity completion to Providers and other Plan vendors upon request by SHBP.

- 5.13 Eligibility Submission. Contractor shall comply with the provisions of the Plan's eligibility and enrollment requirements as outlined in the RFA paragraphs 84-94, the Performance Guarantees and in RFA Exhibit 14: Membership Enrollment Management System (MEMS) Eligibility File layout. DCH shall solely determine eligibility for the Plan. Contractor agrees to accept, in DCH format (currently the Membership Enrollment Management System (MEMS)), the nightly electronic file updates with Eligible Members. The nightly file updates include only additions, deletions and changes to the Membership records. Full eligibility files will be submitted to Contractor on a monthly basis.

5.13.1 Contractor agrees to take responsibility for any costs of any Systems development and testing necessary to accept DCH formatted eligibility files.

5.13.2. Contractor agrees that it has Connect: Direct and secure File Transfer Protocol (FTP), and that it will update or replace these Systems at its own costs for current use, and as DCH requires in the future.

5.13.3 Contractor agrees that it may accept and process eligibility loads each Calendar Day of the year; and that it will stop an eligibility upload in the event that established error thresholds are exceeded.

5.13.4 Contractor agrees that its Systems will provide to SHBP staff view-only access to SHBP's eligibility data contained on its systems. Contractor will provide training for the on-line tool and ongoing support for the SHBP staff.

5.13.5 DCH eligibility format may comply with the HIPAA electronic data interchange ("EDI") rules at 45 C.F.R. 164.162, including eligibility interface in an X12N 834 compliant electronic data interchange transaction set. Notwithstanding, the SHBP reserves the right to continue to use the MEMS proprietary format that is used at execution of this Contract and the file layout in Exhibit to the RFA or that DCH selects during the term of the Contract.

5.13.6 Contractor agrees to perform data interfaces with SHBP Vendors and the decision support system vendor, as provided for in the RFA Paragraph 82. This includes the ability to provide and receive data feeds to and from these other vendors so that eligibility for special Member cost sharing and

eligibility to utilize specific providers, Centers of Excellence, may be timely determined.

- 5.14 Quality Management Program. Contractor shall provide a comprehensive Quality Management Program in accordance with RFA paragraphs 104-110, and Contractor's Approach in response to those paragraphs.
- 5.15 Data Reporting. Contractor agrees to provide data reports in accordance with the requirements in the RFA and Performance Guarantees in Exhibit 4. Contractor shall provide monthly, quarterly, and annual reports as well as ad hoc reports as requested by DCH.
- 5.16. Member Services. Contractor shall operate a toll-free dedicated Member Services telephone line to respond to Member questions, comments and inquiries between the hours of 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday, excluding holidays as specified by SHBP. Contractor shall develop policies and procedures that address staffing, personnel, hours of operation, access and response standards, monitoring of calls via recording or other means, and compliance with standards. Contractor shall submit these telephone policies and procedures, including performance standards pursuant to this Contract to DCH for review and approval within sixty (60) Calendar Days after the Effective Date.
 - 5.17.1 Non-English Speaking Calls. Contractor shall provide Member Services that handle calls from non-English speaking callers through a translation service.
 - 5.17.2 Telecommunications Device for the Hearing Impaired. Contractor shall provide a TDD (Telecommunications Device for the Deaf) service for Members who are hearing impaired.
 - 5.17.3 Other Minimum Requirements. At a minimum, DCH requires that Contractor's Member Services:
 - 5.17.3.1 Have the capability to track call management metrics and provide weekly, monthly, quarterly and annual reports (as outlined in Exhibit 4, *Performance Guarantees*);
 - 5.17.3.2 Consist of Member Services Representatives (MSRs) trained to respond to Member questions in all areas regarding the Wellness Services;
 - 5.17.3.3 Consist of MSRs who have specialized training in assisting the needs of a Member population that has no access to employer assistance and/or the telephone or computer;

- 5.17.3.4 Record all calls and keep recordings for a period of twenty (24) months;
- 5.17.3.5 Allow the DCH to have monitoring capability for live and/or recorded calls remotely and onsite. If recorded calls, allow DCH to select a sampling on a weekly basis;
- 5.17.3.6 Ensure that MSRs will warm transfer Members to other service areas, SHBP Vendors or DCH, if necessary;
- 5.17.3.7 Permit Members to opt out of the Interactive Voice Response (IVR) in order to speak with a live MSR during normal working hours;
- 5.17.3.8 Provide the ability for all automated outreach telephone service messages utilized to support the programs set forth in this Contract to be customized, as requested by DCH;
- 5.17.3.9 Provide for the completion of a Personal Health Assessment in paper form if a Member makes such a request to the MSR;
- 5.17.3.10 Ensure the ability of Members to reach any of the Wellness Services staff by calling the primary Member services toll free number;
- 5.17.3.11 Contractor's Member services staff will be responsible for (i) phone coverage for Member inquiries, (ii) phone coverage for Provider inquiries, (iii) telephonic correspondence with Members, (iv) written correspondence with Members, and (v) on-line (chat) correspondence with Members;
- 5.17.3.12 Provide a process for tracking and logging Member telephone calls and written correspondence; and
- 5.17.3.13 Permit DCH to review its staff training program/materials and similar documents. and to attend and/or monitor the training classes on an on-going basis.

- 5.18 Healthcare Information Exchange. Contractor shall have in place or develop initiatives towards Health Information Exchange (HIE) and Health Care Transparency (HCT) that would encourage the use of electronic health records, make available to Members increased information on cost and quality of care, and offer provider incentives that reward high quality at low cost. Contractor shall demonstrate to DCH its strategies and development toward improving HCT and HIE activities on an annual basis.

- 5.19 Member Communication Materials. Contractor shall develop proposed collateral materials, marketing materials, program descriptions, SPD language, and other materials necessary to adequately inform and educate Members concerning Wellness Programs and Wellness Initiatives. Contractor shall provide these materials to DCH in electronic format for review, revision and approval by DCH at least ninety (90) Calendar Days before the desired date of use or publication for any SPD language, and at least forty-five (45) Calendar Days before the desired date of use or publication for any other materials. Before submitting Member communication materials to DCH, Contractor's materials shall be reviewed and approved by the appropriate Account Directors, with consultation by Contractor's legal counsel if the materials describe actions Members must take in order to obtain any kind of incentive. Contractor's materials shall be accompanied by an affirmation that the materials are accurate, grammatically correct, and do not conflict with the current SPD or any other Plan Documents or materials posted on Contractor's websites or otherwise being made available to Members.
- 5.20 Annual Enrollment Periods. Contractor shall participate in the annual enrollment periods by attending all benefit fairs, annual enrollment period meetings, and train-the-trainer programs throughout the State upon DCH's request.
- 5.21 Resolution of Appeals and Grievances. Contractor shall process appeals in accordance with the terms and conditions of the Wellness Program components of the Plan Documents, and in accordance with Contractor's response to RFA paragraph 16. Contractor shall process grievances that are not Wellness Program appeals in accordance with Contractor's response to RFA paragraph 16.
- 5.21.1 Tracking of Appeals and Grievances. Contractor shall administer a system to track the appeals and grievances received, overturned and upheld, and the characteristics of the appeals and grievances. SHBP shall have remote, view-only access to this tracking system.
- 5.21.2 Reports of Appeals. Contractor shall provide weekly, monthly, quarterly and annual appeals reports to SHBP. SHBP shall have remote, view-only access to this reporting system.
- 5.21.3 Post-Termination Appeals and Grievances. Contractor shall process Member appeals and grievances for 180 Calendar Days after Contract termination. These services will be provided at no additional cost to DCH.
- 5.21.4 Distinguished from Claims for Benefits. To the extent that an appeal or grievance is a claim for benefits, it will be promptly referred to the TPA Vendor for handling.
- 5.22 Resolution of Complaints. Contractor agrees to cooperate in activities with DCH in responding to and resolving complaints from any Member. Complaints may

include but are not limited to dissatisfaction with customer service, administrative issues or web portal access issues.

5.22.1 Tracking of Complaints. Contractor shall administer a tracking, monitoring and response system for addressing the complaints or issues of Members and a reporting system for providing data to DCH on a monthly and quarterly basis in accordance with Exhibit 4, ***Performance Guarantees.***

5.23 Adequate Provision of Services; Non-Discrimination. Contractor shall require that its workers and subcontractors provide Wellness Services to Members that are within the scope of the worker's license (if applicable) and in accordance with the Plan Option. At all times throughout the term of this Contract, Contractor shall maintain adequate facilities, equipment, personnel and administrative services to perform its obligations under and as prescribed in this Contract and under the Plan. Contractor shall render Wellness Services to Eligible Members in the same manner, in accordance with the same standards and with the same time availability as offered to other non-Members. Contractor shall not differentiate or discriminate unlawfully in the treatment of any Member on account of race, color, national origin, religion, sex, marital status, sexual orientation, age, disability, health status, or source of payment and shall comply with Title VII of the Civil Rights Act of 1964 as well as applicable state laws regarding discrimination.

5.24 Health Information Technology. Contractor shall commit to developing improvements in its technology (e.g., decision support systems to provide Providers with up to the minute information on best practices and Wellness Initiatives, access to confidential personal health information online for Members, web-based health information for Members, electronic and more efficient communication between Providers and other Providers as well as between Members and Providers, etc.).

5.25 Wellness Program Determination and Appeals. DCH appoints Contractor as named fiduciary under each Plan Option responsible for performing the following services in accordance with the wellness components of the Plan Options, which are set forth in the Plan Documents: (i) processing information necessary to determine whether a Member complied with the requirements of any Wellness Program; (ii) performing the fair and impartial review of initial appeal of a determination by Contractor that a Member did not complete the requirements, (iii) performing the fair and impartial review of subsequent appeals, and (iv) taking all actions required to comply with State and federal laws that apply to such processing and appeals processing. As such, DCH delegates to Contractor the discretionary authority to (i) construe and interpret the terms of the Plan Options as they relate Wellness Programs, (ii) determine the sufficiency of documentation submitted to Contractor as evidence of completion of requirements, and (iii) make final, binding determinations concerning whether the requirements of the Wellness Program were satisfied.

If Contractor determines that a requirement of the Wellness Program has not been satisfied, Contractor will notify the Employee or the Member of the decision and any appeal rights under the Plan Documents in accordance with the direction of DCH during Implementation.

- 5.26 System Environment and Software. The Systems' environment, i.e., -the physical, Software, security features and the internal controls used by Contractor must meet the minimum internal accounting control standards outlined in the current edition of the Auditor's Study and Evaluation of Internal Control in EDP Systems, published by the American Institute of Certified Public Accountants and its System environment also shall comply with the security standards and requirements set forth in ***Exhibit 8, Information Security***, and in its Approach in response to RFA paragraphs 8.8.1-8.8.4.

5.26.1 System Security. Contractor shall utilize a sufficient and secure facility with hardware, etc., sufficient to process, store and access the volume of submitted transactions on behalf of Members and to handle any projected and actual growth in membership over the term of the Contract. Moreover, Contractor must maintain documented, state-of-the-art Software to accurately process transactions submitted on behalf of Members and must provide a secure System that meets the requirements set forth in Exhibit 8, ***Information Security***, ensures encryption of all Protected Health Information in transmission and during storage on any portable media device, including but not limited to backup tapes, and uses role based access controls and records attempts at unauthorized access to information (Software, data, or media of any kind). Contractor shall provide for sufficient information technology staff to customize the Software to meet DCH's business needs.

5.26.2 Date-Stamp Capacity. Contractor shall maintain a System that can identify date of receipt of documentation demonstrating satisfaction of Wellness Program requirements.

5.26.3 Electronic Data Transfer and Interfaces. Contractor shall provide all requirements for electronic transfers of data to and from DCH and make provisions for SHBP Vendors and the decision support vendor described in the RFA to use electronic transfers of data for interfaces as required in the RFA and under Performance Standards in Exhibit 4.

5.26.4 Absorption of Costs for Changes to Systems and Software. Contractor shall be liable and responsible for all costs for changes to Systems and Software that are incurred to achieve and maintain compliance with state and federal laws in effect on the Effective Date and throughout the life of the Contract.

5.26.5 Enterprise Data Warehouse (EDW). Contractor will maintain an enterprise data warehouse (EDW) for ease in generating user-defined reports and ad hoc reports for the DCH in accordance with requirements established by DCH. .

5.27 System Access. Contractor grants DCH the nonexclusive right to remotely access and use, on a view-only basis, the functionalities contained within the Systems, under the terms set forth in this Contract. DCH agrees that all rights, title, and interests in the Systems and all rights in patents, copyrights, trademarks, and trade secrets encompassed in the Systems will remain owned by Contractor or its licensors or contractors. In order to obtain access to the Systems, DCH shall obtain, and be responsible for maintaining at no expense to Contractor, the hardware, Software, and Internet browser requirements Contractor provides to DCH, including any amendments thereto. DCH shall be responsible for obtaining an Internet Service Provider or other access to the Internet to provide such use and access. DCH shall not (a) access Systems or use, copy, reproduce, modify, or excerpt any of the Systems documentation provided by Contractor in order to access or utilize Systems, for purposes other than as expressly permitted under this Contract; or (b) share, transfer or lease DCH's right to access and use Systems, to any other person or entity which is not a party to this Contract, except that DCH may designate any third party to access Systems on DCH's behalf, provided the third party agrees to these terms and conditions of Systems access.

DCH will use commercially reasonable physical and software-based measures, and comply with Contractor's security procedures, as may be amended from time to time, subject to DCH's written agreement to such amendments, to protect the System, its functionalities, and data accessed through Systems from any unauthorized access or damage (including damage caused by computer viruses). DCH will notify Contractor immediately if any breach of the security procedures, such as unauthorized use, is suspected. Contractor reserves the right to terminate DCH's System access (i) on the date DCH fails to accept the hardware, software and browser requirements provided by Contractor, including any amendments thereto or (ii) immediately on the date Contractor reasonably determines that DCH has breached, or allowed a breach of, any applicable provision of this Section 5.27. DCH's System access will also terminate upon termination or expiration of this Contract, provided however that during the 180 Calendar Day period described in Section 25, ***Termination of Contract***, DCH may continue to access applicable functionalities within the Systems during this period. Upon any of the termination events described in this Contract, DCH agrees to cease all use of Systems, and Contractor will deactivate DCH's identification numbers, passwords, and access to the System.

5.28 Improper Payments, Waste, Fraud and Abuse. Contractor shall have written program integrity policies and procedures, including a mandatory compliance plan designed to guard against improper payments of incentives associated with

Wellness Programs and Wellness Initiatives, and waste, fraud and abuse associated with Wellness Programs and Wellness Initiatives. The program integrity policies and procedures shall include policies, procedures, and standards of conduct for the prevention, detection, reporting, overpayment recovery and corrective action for suspected, reported and/or investigated cases of improper payments, waste, fraud and abuse in the administration and delivery of services under this Contract.

5.28.1 Cooperation and Coordination with DCH and Other Agencies and their agents. Contractor shall cooperate and assist any State or federal agency and their Agents charged with the duty of identifying, investigating, or prosecuting suspected improper payments, waste, and fraud and abuse cases. Contractor shall permit access to Contractor's place of business during normal business hours, provide requested information, including, but not limited to any and all requested claim data, provide any and all requested data, permit access to personnel, financial and medical records, and provide internal reports of investigative, corrective and legal actions taken relative to the suspected case of fraud and abuse directly or indirectly related to services under this Contract. This access to Contractor's place of business and requested information shall be provided at no extra charge. Contractor shall work closely with DCH Office of Inspector General (OIG) program integrity staff to ensure that the activities of one entity do not interfere with an ongoing investigation being conducted by the other entity.

5.29 Readiness Review. Contractor shall participate in all readiness reviews activities conducted by DCH staff to ensure Contractor's operational readiness. Contractor will review and address all issues identified in the summary of findings document provided by DCH after each readiness review activity and resolve all issues identified within the agreed upon time frames.

6. PAYMENT OF INCENTIVES

6.1 Funding and Payment of Incentives under Wellness Programs. Incentives due to Employees in accordance with the terms of the Wellness Programs described in Plan Documents are funded in accordance with general funding provisions applicable to the SHBP, and are not funded from Contractor's Wellness Promotion Account.

6.2 Funding and Payment of Incentives, Other Use of Wellness Promotion Account. Contractor shall obtain DCH approval before using the Wellness Promotion Account in support of Wellness Initiatives and the Wellness Program.

7. **DELIVERABLES**

- A. Contractor shall provide all Deliverables within the time frames specified for the Deliverable in this instrument, Exhibit 4, *Performance Guarantees*, in the RFA, in the Approach, or in the Implementation Plan.
- i. Contractor shall include at least five (5) Business Days for each Deliverable for DCH to conduct a complete review of each submitted Deliverable.
 - ii. All Deliverables, or notice that Deliverables have been provided, shall be emailed or mailed to the DCH Program Manager identified in Section 33, *Notice*.
 - iii. All Deliverables provided by Contractor must be acknowledged in writing by the DCH Program Manager to be considered received.
 - iv. Based on DCH's review, DCH may accept or reject all or part of each Deliverable, or request that Contractor make revisions. This review process may be repeated or extended as determined by DCH when revisions to Deliverables are required and/or Deliverables are rejected.
- B. If the Deliverable is determined to be not in compliance with this Contract, inaccurate, or incomplete, DCH will send written notification to Contractor's Account Director outlining the reason(s) for such determination. Contractor, at no additional expense to DCH, will begin to correct the non-compliance as soon as possible, but no later than within two (2) Business Days of notice and will resubmit the Deliverable to DCH for its review as provided above.

8. **TERM OF CONTRACT**

This term of this Contract shall begin on the Effective Date and shall continue until the close of the then current calendar year unless renewed as expressed herein. The Parties also agree that DCH, in its sole discretion, shall have **four (4)** sequential options to renew the term of this Contract for an additional term of **up to one (1) calendar year, which shall begin on January 1, and end at midnight on December 31, of that additional year**, each upon the same terms and conditions and at Contractor's price in effect at the time of the renewal in accordance with the Administrative Fees outlined in Exhibit 3. Pursuant to O.C.G.A. § 50-5-64(a)(2), the renewal option shall be exercisable solely and exclusively by DCH, depending upon funding Contractor's performance, and DCH's sole discretion. As to each term, the Contract shall expire absolutely at the close of the then current calendar year without further obligation by DCH except that DCH will provide payment for services provided up to the date of termination or expiration of the Contract unless renewed as expressly stated herein or subject to DCH's exercise of its remedies.

9. **PAYMENT FOR SERVICES**

A. DCH shall compensate Contractor in accordance with the amounts set forth in Exhibit 3, ***Administrative Services and Fees***. Each invoice for payment must reference the Contract Number, Contractor's tax identification number, and be itemized to identify the activities being billed and all Deliverables due during the time period of the invoice. DCH will pay the invoice within thirty (30) Calendar Days of receipt, as adjusted to reflect payment offsets and payment delays permitted under this Contract, upon approval of Deliverables or partial Deliverables and the invoice by the DCH Program Manager.

B. Contractor shall mail each invoice to the following address:

GA Department of Community Health
Two Peachtree Street NW
35th Floor
Atlanta, GA 30303
ATTN: Trudie Nacin
Chief, State Health Benefit Plan

with an email copy to: _____

C. If DCH rejects Contractor's performance of Administrative Services or Deliverables, Contractor shall promptly reperform such Services or Deliverables to remedy any deficiencies at no additional cost to DCH and resubmit to DCH for approval in accordance with the process described in Section 26, ***Unsatisfactory Performance and Damages***.

D. The total of all payments made by DCH to Contractor under this Contract shall not exceed the costs referenced in Exhibit 3 to this Contract (the "Maximum Funds"), which have been provided for through the use of State or other designated funds. DCH shall have no responsibility for payment beyond that amount. It is expressly understood that the total amount of payment to Contractor will not exceed the Maximum Funds provided above, unless Contractor has obtained prior written approval, in the form of a Contract amendment, authorizing an increase in the total payment. Additionally, Contractor agrees that DCH will not pay or otherwise compensate Contractor for any work that it performs in excess of the Maximum Funds.

E. Contractor shall not increase any charges for the Administrative Services set forth in Exhibit 3, nor may Contractor decrease the discounts set forth in Exhibit 3, during the Term of this Contract and during all renewal periods. However, Contractor shall automatically pass on any increases to discounts during the Term of this Contract.

- F. Moreover, Contractor's employees, designees, or assignees, consultants and independent contractors (collectively "Workers") shall not be entitled to, nor shall they receive any additional consideration, compensation, salary, wages, or any other type of remuneration from the State for services rendered under this Contract, except as specifically permitted herein. In particular, the Workers will not be entitled, by virtue of this Contract, to consideration from the State in the form of overtime, health insurance benefits, retirement benefits, disability benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid or unpaid leaves of absence of any type or kind whatsoever for any reason.
- G. Upon termination or expiration of this Contract, Contractor shall continue to process appeal and grievances for 180 Calendar Days after the date of termination or expiration at no cost. All of the other terms and conditions of this Contract will apply during this period.

10. FUNDING

Notwithstanding any other provision of this Contract, the Parties hereto acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. At the sole discretion of DCH, this Contract shall terminate without further obligation of the State if the source of payment for DCH's obligation no longer exists or is insufficient. Notification by DCH that any of the events stated above has occurred shall be conclusive and not subject to appeal.

11. PAYMENT OF TAXES

- A. Contractor will forthwith pay all applicable taxes lawfully imposed upon it with respect to this Contract or any product delivered in accordance herewith. DCH makes no representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity.
- B. Furthermore, Contractor shall be responsible for payment of all expenses related to, based on, or arising from salaries, benefits, employment taxes (whether State or federal), and insurance (whether health, disability, personal, or retirement) for its employees, Subcontractors, designees, or assignees.

12. RELATIONSHIP OF PARTIES

Neither Party is an agent, employee, assignee or servant of the other. It is expressly agreed that Contractor and any Subcontractors and agents, officers, and employees of Contractor or any Subcontractor in the performance of this Contract shall act as independent contractors and not as officers or employees of DCH. DCH shall not be responsible for withholding taxes with respect to Contractor's compensation hereunder. The Parties acknowledge, and agree, that Contractor and any Subcontractor, and their respective agents, employees, and servants shall in no way hold themselves out as agents,

employees, or servants of DCH. The Parties also agree that the Contractor and any Subcontractors, and their respective agents, employees, and servants shall have no claim against DCH hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. It is further expressly agreed that this Contract shall not be construed as a partnership or joint venture between the Contractor or any Subcontractor and DCH.

13. INSPECTION OF WORK

DCH, the State Department of Audits and Accounts, the U.S. Department of Health and Human Services, the General Accounting Office, the Comptroller General of the United States, if applicable, or any other State or federal authorized representatives, shall have the right to enter into the premises of Contractor and all Subcontractors, or such other places where duties under this Contract are being performed or records are being held for DCH in order to inspect, monitor or otherwise evaluate the services or any work performed pursuant to this Contract. Contractor shall bear all costs associated with inspections and evaluations of work where Contractor's or a Subcontractor's deficiency is the reason for the inspection. Unless State or federal officials determine that there are reasons that certain procedures should occur without advance warning, all inspections and evaluations of work being performed shall be conducted with prior notice and during normal business hours. All inspections and evaluations shall be performed in such a manner as will not, to the extent considered practical in the State or federal official's judgment, unduly delay work.

Contractor agrees to sign and comply with Attachment A, Georgia DCH Non-Profit Organization Disclosure Form.

14. STATE PROPERTY

Contractor shall be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this Contract. Contractor will also reimburse DCH for its loss or damage, normal wear and tear excepted, while such property is in Contractor's custody or use.

15. OWNERSHIP AND USE OF WORK PRODUCT, DCH DATA AND RELATED MATTERS, AND ACCEPTANCE OF SYSTEM CHANGES

A. Ownership and Use of Work Product.

All Work Product shall be the exclusive property of DCH, for whatever use DCH deems appropriate, and Contractor shall execute any and all documents necessary to effectuate this provision fully. For example, if the Work Product or Administrative Services includes the taking of photographs or videotapes of individuals, Contractor must obtain the written consent from such individuals authorizing the use by DCH of such photographs, videotapes, and names in

conjunction with such use. Contractor shall also obtain necessary written releases from such individuals, releasing DCH from any and all claims or demands arising from such use. Contractor hereby transfers and assigns all rights in the Work Products to DCH. Contractor shall, at the expense of DCH, assist DCH or its nominees to obtain copyrights, trademarks, or patents for all such works in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to DCH right, title and interest in and to such works. Contractor also agrees to waive and not assert any moral rights it may have in any such works. Contractor shall provide all assistance reasonably requested by DCH in the establishment, preservation, and enforcement of its rights in such Work Products, without any additional compensation to Contractor. Contractor agrees to and hereby, to the extent permissible, waives all legal and equitable rights relating to the Work Products, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

1. Contractor may retain a copy of such Work Product for its business records and in accordance with the Business Associate Agreement. Contractor shall retain all proprietary rights to all software, data systems, methodologies or formats used by Contractor to prepare the Work Product that are made, developed, or reduced to practice solely by Contractor.
2. Upon execution of a joint confidentiality and information sharing agreement, Contractor shall share Work Product with the SHBP Vendors upon DCH's written request in order that all SHBP Vendors may perform services under their respective contracts and satisfy the deliverables under those contracts. Nothing in this Agreement shall be construed to give DCH or another SHBP Vendor any right, title or interest in the proprietary rights described above. In the event of a dispute regarding what is or is not Work Product, DCH shall make such determination, which determination shall be final, binding and not subject to appeal.
3. Contractor shall not share or publish Work Product without the prior written consent of DCH.

B. Ownership and Use of DCH Data.

DCH Data shall be the exclusive property of DCH, except that Contractor may retain a copy of such DCH Data for its business records and in accordance with the Business Associate Agreement. Upon execution of a joint confidentiality and information sharing agreement, Contractor shall share DCH Data with the SHBP Vendors upon DCH's written request in order that all SHBP Vendors may perform services under their respective contracts and satisfy the deliverables

under those contracts. In the event of a dispute regarding what is or is not DCH Data, DCH shall make such determination, which determination shall be final, binding and not subject to appeal.

Contractor shall not share or publish DCH Data without the prior written consent of DCH.

C. Software and Other Upgrades

The Parties agree that any upgrades or enhancements to software programs, hardware, or other equipment, whether electronic or physical, shall be made at Contractor's expense only, unless the upgrade or enhancement is made at DCH's request and solely for DCH's use exclusive of the Deliverables. Any upgrades or enhancements requested by and made for DCH's sole use shall become DCH's property without exception or limitation. Contractor agrees that it will facilitate DCH's use of such upgrade or enhancement and cooperate in the transfer of ownership, installation, and operation by DCH.

D. Infringement and Misappropriation.

Contractor warrants that all Work Products provided by Contractor do not and will not infringe or misappropriate any right of any third party based on copyright, patent, trade secret, or other intellectual property rights. In case the Work Products or any one or part thereof is held or alleged to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to Contractor to be likely to be brought, Contractor will, at its own expense, either:

1. Procure for DCH the right to continue using the Work Product; or
2. Modify or replace the Work Product to comply with the Specifications so that no violation of any intellectual property right occurs. If Contractor fails to comply with the terms and conditions set forth in this Section 15, DCH shall have the option to terminate the Contract; or
3. If Contractor fails to comply with the terms and conditions set forth in this Section 15.D, DCH shall have the option to terminate the Contract, in whole or in part, and receive a refund of amounts paid for the infringing or misappropriating Work Product and other Work Product returned by DCH in addition to any other remedies available to DCH. However, DCH's acceptance of a refund does not preclude DCH from availing itself of its others rights and remedies under this Contract, or under equity or at law.

E. Customization.

If DCH requests specific customization of Software programs, hardware, or other equipment, whether electronic or physical after the initial term of this Contract begins, Contractor shall promptly make the requested change or modification at no cost to DCH.

F. System Changes.

1. All system changes required to comply, enable, and operate data transfers pursuant to this Contract shall be enabled, completed, and operated at no cost to DCH.
2. The Parties agree that the required system changes are not complete until they are fully implemented and tested and receive DCH's Acceptance prior to the deadline for use set forth in the Implementation Plan. DCH's determination on whether the system changes are complete and satisfactory shall be conclusive and final.
3. Contractor must give Confirmation for each system change prior to DCH beginning to perform Acceptance Tests. Upon delivery of a system change and receipt of Confirmation from Contractor that the system change meets its Specifications, DCH will, with Contractor's assistance and in accordance with the Implementation Plan, promptly review or perform Acceptance Tests on the system changes, as applicable, to determine whether the system changes conform to its Acceptance Criteria.
4. DCH will provide Acceptance for a system change if it has no Deficiencies. However, if a Deficiency is found, DCH will notify Contractor in an email or other document of Deficiencies used as the grounds for DCH's decision not to give Acceptance. Contractor shall correct Deficiencies and resubmit a corrected system change to DCH which will review or perform Acceptance Tests on the system change to verify whether the system change lacks Deficiencies and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor's times for correcting Deficiencies and DCH's review of system changes shall be in accordance with the timeframes therefor set in the Implementation Plan. If time periods for correcting system changes by Contractor and reviewing and retesting corrected system changes are not in the Implementation Plan, each such time period shall be ten Business Days.
5. If Contractor is unable to correct all Deficiencies within the number of days indicated in the Implementation Plan following the system change's scheduled Acceptance, or if no such date is in the Implementation Plan, within 30 Calendar Days from such scheduled Acceptance date, DCH may, at its option: (a) continue reviewing or performing Acceptance Tests on the system change and require Contractor to continue until Deficiencies

are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement system change for further review or Acceptance Tests; (c) set-off from the Charges to the extent DCH determines the Deficiencies for the system change have not been corrected and provide Acceptance for the system change; or (d) after completion of the process set forth in this Section and providing Notice of default to Contractor, immediately terminate this Contract, in whole or in part, without penalty or liability to DCH, and return to Contractor the system change and other Deliverables returned with the rejected system change. If DCH terminates this Contract under this Section, Contractor shall, within 20 Calendar Days thereafter, refund to DCH all payments made to Contractor for the returned Deliverables and Services rendered therefor.

G. Disaster Recovery.

1. Contractor shall provide a disaster recovery plan within ten (10) Calendar Days of the Effective Date, or a later date as is approved in writing by the Program Manager, and shall maintain for the Term of the Contract a detailed disaster recovery plan that will be implemented in the event that Contractor's facility experiences a disaster (for example, power outages, computer virus infections, natural disaster, etc.) that impacts, or could reasonably be expected to impact, Contractor's ability to provide the Administrative Services. This disaster recovery plan shall include but not be limited to the following:
 - i. Notification process;
 - ii. Identification of Contractor's disaster recovery location and equipment; and
 - iii. Testing frequency of the plan; and Step-by-step explanation of the backup and recovery procedures of services, which must include the number of hours to complete each step within a 12 hour period.
2. Contractor shall submit an updated disaster recovery plan by January 31 of each year of the Term, unless the DCH Program Manager provides written approval of a later date.
3. Contractor shall conduct an annual disaster recovery plan review and exercise at Contractor's own expense. The review must test all components of Contractor's operation, including but not limited to services provided by any third parties. A written report of the findings must be delivered to DCH within 15 Calendar Days of the date that the test is conducted, unless the DCH Program Manager provides written approval of a later date. Contractor must develop a written corrective

action plan for any deficiencies noted in the test and must thoroughly re-test until satisfactory results are achieved and maintained.

4. DCH, federal auditors, or the State Department of Audits and Accounts, reserves the right to conduct a site visit of Contractor's disaster recovery location with one (1) day prior notice.
5. This Section 15.G shall survive termination of this Contract for any reason, so long as Contractor maintains any information required under this Contract to be maintained by the Contractor after termination.

H. Discharge of Liens.

Contractor shall immediately discharge or cause to be discharged any lien or right in lien of any kind, other than in favor of DCH, which at any time exists or arises in connection with work done or equipment or other instrumentality furnished under this Contract. If any such lien or right in lien is not immediately discharged, DCH may discharge or cause to be discharged such lien or right at the expense of Contractor.

16. **CONTRACTOR STAFFING**

A. Staffing Assignments and Credentials.

1. Contractor warrants and represents that all persons, including employees, independent contractors and consultants assigned by it to the performance of this Contract, shall be employees or formal agents of Contractor and shall have the credentials necessary (i.e., licensed, and bonded, as required) to perform the Administrative Services and/or deliver the Deliverables. Contractor shall include a similar provision in any contract with a Subcontractor that performs Administrative Services.
2. In addition, Contractor warrants that all persons assigned by it to perform work under this Contract shall be employees or formal agents of Contractor or authorized Subcontractors and shall be fully qualified to perform the Administrative Services and/or deliver the Deliverables required herein. Personnel commitments made in Contractor's Approach shall not be changed unless approved by DCH in writing.
3. Contractor shall provide and maintain sufficient qualified personnel and staffing to enable the Deliverables to be provided in accordance with this Contract and the Implementation Plan. Contractor warrants that it will comply with all staffing/personnel obligations set out in Contractor's Approach.

4. Contractor warrants that all staff performing Administrative Services shall be located entirely within the boundaries of the United States.
5. Contractor shall provide the DCH Program Manager with a staff roster every ninety (90) Calendar Days during the term of the Contract. This roster shall set forth the names of all members of Contractor's staff performing Administrative Services (including staff of Subcontractors), their areas of assignment and the number of hours they are required to work.

B. Staffing Changes.

1. DCH may reject any proposed changes in Key Staff, or require the removal or reassignment of any Key Staff that DCH deems to be unacceptable. DCH's decision on this matter shall be final, subject to the provisions of Section 31, Conflict Resolution.
2. Notwithstanding the above provisions, the Parties acknowledge and agree that Contractor may terminate any of the Key Staff or workers designated to perform the Administrative Services, as permitted by applicable law.
3. In the event Contractor terminates an employee who performs Administrative Services under this Contract, Contractor will provide DCH with immediate notice of the termination, the reason(s) for the termination, and an action Plan for replacing the discharged employee with a person of equivalent training, experience, and talent within ten (10) Calendar Days of the termination, unless the DCH Program Manager provides written approval of a later date.
4. Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff shall not be changed during the Contract from the people who were described in the Approach without the prior written approval of DCH until completion of their assigned tasks. During the term of the Contract, DCH reserves the right to approve Contractor's and any Subcontractor's Key Staff assigned to this Contract.
5. Contractor shall notify DCH prior to any changes to Key Staff. Contractor shall replace any of the Key Staff with a person of equivalent experience, knowledge and talent. Within ten (10) Calendar Days of termination of a Key Staff member, or by a later date if approved in writing by the DCH Program Manager, Contractor shall provide DCH Program Manager with the resume of the proposed replacement and offer DCH Program Manager, and/or his or her authorized representatives, the opportunity to interview that person. If the DCH Program Manager is not reasonably satisfied with the apparent skill and qualifications of the proposed replacement, he or she shall notify Contractor within ten (10) Calendar Days after receiving the resume or conducting the

interview (whichever occurs last). Once that has occurred, Contractor shall propose another replacement and the DCH Program Manager shall have the same right of approval. Such process shall be repeated until a proposed replacement is approved by DCH Program Manager. If, after thirty (30) Calendar Days from the notice termination, a qualified replacement is not approved, damages may be imposed.

C. Specific Staffing Requirements.

1. Contractor shall submit its staffing plan within fifteen (15) Calendar Days of the Effective Date. The staffing plan must be approved by DCH, and Contractor may not increase or decrease the number of staff approved by DCH without DCH written approval. Such approval shall not be unreasonably withheld.
2. Contractor shall assign a Dedicated Account Director and service representatives described in Paragraph 7(a)-(g) of the RFA (account management team) for purposes of working directly with DCH.
3. All account management team members shall be either Dedicated or Designated in accordance with Paragraph 7 of the RFA and Contractor's Approach. The account management teams shall be comprised of individuals with specialized knowledge of Contractor's corporate operations, Wellness Services activities, eligibility systems, and Systems reporting capabilities, and all other requirements necessary to fulfill Contractor's responsibilities.
4. The Account Director and other account management team members, as specified in RFA paragraph 9 and/or as needed, shall be available during regular business hours and during emergencies, including being available for frequent telephone and on-site consultation with DCH in Atlanta, Georgia. At a minimum, those account management team members shall meet with SHBP on a weekly basis during the transition period, and then graduate as mutually agreed upon as the Parties' contractual relationship matures. At these meetings, the Parties shall discuss Wellness Services, review program results, re-evaluate strategy and address any other concerns or issues that the SHBP staff may raise. The Wellness Director shall assist DCH with leading the SHBP Wellness Committee, formalizing communications strategy and coordinating wellness events as requested by the DCH. The Account Management team shall acknowledge all requests from DCH upon receipt and respond to all inquiries from DCH within one (1) Business Day.
5. The account management teams shall be proactive in making recommendations to DCH to promote Wellness and health outcomes for Members.

6. Contractor's staff who are managed by the account management teams shall be thoroughly familiar with all Contractor's services that relate directly and indirectly to DCH and shall act on behalf of DCH in minimizing administrative delay.
7. The account management team's staff shall be available during the hours of 8:00 am through 8:00 pm Eastern Time, Monday through Friday, excluding holidays specified by DCH.
8. Customer service facilities which handle DCH Member or Provider calls must be located within the continental United States of America.
9. Contractors' customer service representatives must have the ability to warm transfer a call to the SHBP offices or another SHBP Vendor without the Member having to hang up and dial the SHBP Vendor directly.
10. Appropriate representative(s) from each account management team or members of their staff shall attend all benefit fairs that occur across the State prior to the annual enrollment period for Employees who are actively working for an Employing Entity. Appropriate representative(s) also will attend the retiree meetings that are conducted across the State prior to the annual enrollment period for Employees who are not actively working for an Employing Entity.
11. Contractor agrees that DCH has the right to accept or decline the account management teams' staff, as well as Key Staff Designated or Dedicated to work on behalf of DCH.
12. Contractor shall provide staffing levels necessary to conduct outreach to Members in a timely and comprehensive fashion in order to achieve the goals set forth in the Performance Standards set forth in Exhibit 4. Contractor shall provide a Dedicated team of wellness coaches, registered dietitians, exercise physiologists or other clinical staff to support Contractor's required services under this Contract, including attendance and participation at SHBP benefit fairs as needed.

17. CRIMINAL BACKGROUND, EXCLUSIONS, AND DEBARMENT

- A. Contractor shall, upon request, provide DCH with a resume or written confirmation that Contractor has conducted a satisfactory criminal background check or both of any employees, contractors, or formal agents of Contractor or Subcontractors assigned to or proposed to be assigned to any aspect of the performance of this Contract.

- B. Contractor shall abide by 42 USCS § 1320a-7 and all other related provisions or laws. To that end, Contractor shall not employ or use any company, entity, or individual that is on the Federal Exclusions List or any company, entity, or individual subject to 42 USCS § 1320a-7.
- C. By signing or executing this Contract, Contractor states and certifies that it is in compliance with and that it will continue to comply with the Anti-Kickback Act of 1986, 41 USCS § 51-58 and Federal Acquisition Regulation 52.203-7.
- D. Additionally, Contractor states and certifies that neither it nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or federal department or agency.
- E. Contractor shall sign and comply with Attachment C, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

18. SUBCONTRACTS

A. Use of Subcontractors.

1. Contractor will not subcontract or permit anyone other than Contractor employees and DCH authorized Subcontractors as of the Effective Date to perform any Administrative Services without the prior written consent of DCH. Prior to hiring or entering into an agreement with any Subcontractor to perform Administrative Services, any and all Subcontractors shall be approved in advance and in writing by DCH. DCH must also approve any replacement Subcontractors in the same manner. Contractor shall, in writing, provide to DCH the names of all proposed or actual Subcontractors, the scope of Administrative Services they each will perform, and the percentage of work to be performed by each Subcontractor relative to the total scope of the Contract. Contractor is solely responsible for all work required by this Contract, whether Contractor performs the work directly or through a Subcontractor. DCH reserves the right to request the removal or replacement of any Subcontractor. In addition, DCH reserves the right to terminate this Contract, in whole or in part, or exercise any remedies available at law or equity if Contractor fails to notify DCH of its intent to subcontract any Service or replace any Subcontractor in accordance with the terms of this paragraph.
2. All contracts with Subcontractors must ensure that Contractor evaluates the prospective Subcontractor's ability to perform the activities to be delegated; monitors the Subcontractor's performance on an ongoing basis and subjects it to formal review according to a periodic schedule established by DCH and consistent with industry standards and applicable

laws and regulations; and identifies deficiencies or areas for improvement by the Subcontractor and requires that corrective action is taken by the Subcontractor.

3. Contractor shall give DCH immediate notice in writing by registered mail or certified mail of any action or suit filed by any Subcontractor and prompt notice of any claim made against Contractor by any Subcontractor or vendor that in the opinion of Contractor may result in litigation related in any way to this Contract.
4. Contractor shall make its Subcontractor agreements available to DCH upon request. For any subcontract, there must be a designated project manager who is a member of the Subcontractor's staff and who is directly accessible by DCH. This individual's name and contact information must be provided by Contractor to DCH when the subcontract is executed or the Effective Date, if earlier. The subcontract agreement must contain a provision which requires Contractor and its Subcontractors to seek binding arbitration to resolve any dispute between those parties and to provide DCH with written notice of the dispute. DCH also reserves the right to oversee, manage, coordinate, change, or disagree on any terms of the subcontract during the term of this Contract or the subcontract agreement.

B. Cost or Pricing by Subcontractors.

1. Contractor shall submit, or shall require any Subcontractors hereunder to submit, cost or pricing data for any subcontract to this Contract prior to the Effective Date. Contractor also shall certify that the information submitted by Subcontractors is to the best of their knowledge and belief, accurate, complete and current as of the date of agreement, or the date of the negotiated price of the subcontract to the Contract or Amendment to the Contract. Contractor shall insert the substance of this Section 18.B in each subcontract hereunder.
2. If DCH determines that any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract was increased by any significant sum because of the inaccurate cost or pricing data, then such price and cost shall be reduced accordingly and this Contract and the subcontract shall be modified in writing to reflect such reduction.

19. TRAVEL EXPENSES AND USE OF STATE VEHICLES

- A. Contractor is solely responsible for all travel costs arising from Contractor's performance under this Contract.

- B. State vehicles shall not be used by Contractor in the performance of this Contract.

20. LICENSE, CERTIFICATE, AND PERMIT REQUIREMENT

- A. Contractor shall have, obtain, and maintain in good standing any licenses, certificates and permits, whether State or federal, that are required prior to and during the performance of Administrative Services under this Contract. Contractor shall provide DCH with certified copies of all licenses, certificates and permits that may be necessary for the performance of its obligations, upon DCH's request.
- B. Contractor warrants that it is qualified to do business in the State of Georgia and is not prohibited by its articles of incorporation, bylaws, any document establishing Contractor's entity, or any law of the State under which it is incorporated or was formed from performing the Administrative Services under this Contract.
- C. Loss of the licenses, certificates, or permits described above shall be cause for termination of the Contract pursuant to Section 25, *Termination of Contract*. If any such license, certificate, or permit is cancelled, revoked, suspended or expires during the term of this Contract, Contractor shall inform the State immediately and cease all activities under this Contract, until further instruction from DCH.
- D. Contractor represents that there is as of the Effective Date no claim, legal action, counterclaim, suit, arbitration, governmental investigation or other legal, administrative, or tax proceeding, or any order, decree or judgment of any court, governmental agency, or arbitration tribunal that is in progress, pending, or threatened against or relating to Contractor or the assets of Contractor that would individually or in the aggregate have a material adverse effect on Contractor's ability to perform the obligations contemplated by this Contract. Without limiting the generality of the representation of the immediately preceding sentence, Contractor is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not presently contemplate filing any such voluntary petition, and is not aware of any intention on the part of any other person, or entity, to file such an involuntary petition against it.
- E. Contractor further agrees that it will not permit any of its employees or formal agents or its Subcontractor's employees, contractors, or formal agents, including but not limited to temporary or replacement employees, to perform the Administrative Services under this Contract unless and until they pass Contractor's own background screening requirements and any additional background test or check requested by DCH.

21. RISK OF LOSS AND REPRESENTATIONS

- A. DCH takes no title to any of Contractor's goods used in providing the Administrative Services and/or Deliverables hereunder and Contractor shall bear all risk of loss for any goods used in performing work pursuant to this Contract.
- B. The Parties agree that DCH may reasonably rely upon the representations and certifications made by Contractor, including but not limited to those made by Contractor in Contractor's Approach and this Contract, without first making an independent investigation or verification.
- C. The Parties also agree that DCH may reasonably rely upon any representation made by Contractor for any audit report, summary, analysis, certification, review, or Work Product that Contractor produces in accordance with its duties under this Contract, without first making an independent investigation or verification.
- D. By submitting a Deliverable, Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner, which will, in concert with other tasks, meet the objectives stated or referred to in the Contract.
- E. By unconditionally approving a Deliverable, DCH represents only that it has reviewed the Deliverable and detected no errors or omissions of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding or denial of payment for the work completed. DCH's approval of a Deliverable does not discharge any of Contractor's contractual obligations with respect to that Deliverable or Contractor's meeting of the requirements of the RFA and the Approach.

22. PROHIBITION OF GRATUITIES AND LOBBYIST DISCLOSURES

- A. Contractor, in the performance of this Contract, shall not offer or give, directly or indirectly, to any employee or agent of the State of Georgia, any gift, money or anything of value, or any promise, obligation, or contract for future reward or compensation at any time during the Term, and shall comply with the disclosure requirements set forth in O.C.G.A. § 45-1-6.
- B. Contractor represents and warrants that it has complied and shall comply with all disclosure and registration requirements for vendor lobbyists as set forth in O.C.G.A. § 21-5-1, et seq. and all other applicable law, including but not limited to registering with the Georgia Government Transparency and Campaign Finance Commission. For the purposes of this Contract, vendor lobbyists are those who lobby state officials on behalf of businesses that seek a contract to sell goods or services to the State or oppose such Contract.
- C. As required by applicable federal law, Contractor represents and warrants that no federal money has been used or shall be used for any lobbying of State officials.

- D. Contractor shall sign and comply with Attachment F, ***Vendor Lobbyist Disclosure and Registration Certification Form*** and Attachment H, ***DCH Ethics in Procurement Policy***.

23. RECORDS REQUIREMENTS

Contractor agrees to maintain books, records, documents, invoices and other evidence pertaining to the costs and expenses of this Contract and/or any document that is a part of this Contract by reference or inclusion. This includes, but is not limited to, Contractor's balance sheets, income statements and invoices from Subcontractors or other vendors. Contractor's accounting procedures and practices shall conform to generally accepted accounting principles and the costs properly applicable to this Contract shall be readily ascertainable therefrom. This includes, but is not limited to, payment (with respect to salary), overhead and Subcontractors.

A. Records Retention Requirements.

Contractor shall preserve and make available all of its records pertaining to the performance under this Contract for a period of seven (7) years from the date of final payment under this Contract, and for such period, if any, as is required by applicable statute, regulate, or by any other section of this Contract. If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for period of seven (7) years from the date of termination or of any resulting final settlement, whichever is later. In addition to this seven year (or later, if applicable) period, records that relate to appeals, litigation, or the settlement of claims arising out of the performance of this Contract, or costs and expenses of any such agreements as to which exception has been taken by DCH, Contractor, or either Party's duly authorized representatives shall be retained by Contractor until such appeals, litigation, claims or exceptions have been disposed of.

B. Access to Records.

Contractor shall make all of its and its Subcontractors' books, documents, papers, Provider records, Member records, medical records, case management records, encounter records, financial records, data, surveys, audio recordings, video recordings, pictures, images and computer databases available for examination and audit by DCH, State Attorney General, State Health Care Fraud Control Unit, the State Department of Audits and Accounts, or other authorized state or federal personnel. Any records requested hereunder shall be produced immediately (within one (1) Business Day, or by such later date as is approved in writing by the requestor and the DCH Program Manager)) for on-site review or sent to the requesting authority by mail within fourteen (14) Calendar Days following a request, or by a later date approved in writing by the requestor and the DCH Program Manager. All records shall be provided at the sole cost and expense of

Contractor. DCH shall have unlimited rights to use, disclose, and duplicate all information and data received in accordance with applicable State and federal laws and regulations. The “Access to Records” requirements apply to items directly or indirectly related to this Contract or to the Administrative Services provided under this Contract.

C. Financial Records.

During the entire life of the Contract, Contractor and all Subcontractors shall provide DCH with copies of its annual report and all disclosure or reporting statements or forms filed with the State of Georgia and/or the Securities and Exchange Commission (SEC) within ten (10) Calendar Days of the date they are prepared in final form and are otherwise available for distribution or filing, or such later date as the DCH Program Manager may approve in writing. In the event that Contractor is not required to or does not prepare either an annual report or SEC disclosure or reporting statements or forms by virtue of being a subsidiary or other affiliate (as defined by the Securities and Exchange Commission of the United States) of another corporation or business entity, it shall fulfill the requirements of this Section 23.C, with respect to all such documents for any parent corporation, which reflect, report or include any of its operations on any basis. In addition, upon the written request of the DCH Program Manager, Contractor and all Subcontractors shall furnish DCH with the most recent unaudited and audited copies of its then current balance sheet within fourteen (14) Calendar Days of its receipt of such request.

24. CONFIDENTIALITY AND INFORMATION SECURITY REQUIREMENTS

A. General Confidentiality Requirements.

1. Due to information received by DCH normally being subject to the Open Records Act of Georgia (O.C.G.A. §50-18-70 et seq.) and open to public inspection, if Contractor claims that any portion of its material submitted to DCH is a proprietary trade secret, Contractor must clearly identify at the time of submission those portions of the material. In addition, Contractor is required to submit an affidavit which meets the requirements of O.C.G.A. § 50-18-72(a)(34) setting forth any and all trade secret claims. Material submitted to DCH that is not designated as a trade secret(s) is subject to disclosure under the Open Records Act of Georgia. Information that is designated as a trade secret will not be disclosed under the Open Records Act without 1) a determination by DCH’s Office of General Counsel that the information is not a trade secret and 2) prior notification of Contractor that DCH intends to disclose the information, which notification will enable Contractor to seek legal protection of the information. If DCH determines that information submitted by Contractor is a trade secret and must not be disclosed by DCH as required herein, DCH shall use commercially reasonable efforts to hold such information

in confidence. Contractor shall hold in confidence any State or third party information, which is provided by DCH or obtained by Contractor under this Contract and which is not required to be disclosed pursuant to applicable law or regulation.

2. All individually identifiable health information that is obtained or viewed by employees, contractors and formal agents of Contractor and Subcontractors in the performance of this Contract shall be treated as confidential information and Contractor and Subcontractors shall not use any such information so obtained in any manner, except as may be necessary for the proper discharge of obligations under this Contract.
3. Upon DCH's request, Contractor shall remove any person from performance of Administrative Services hereunder upon notice that DCH reasonably believes that such person has failed to comply with the confidentiality obligations of this Contract or the terms of the Business Associate Agreement. In such cases, Contractor shall replace such removed personnel in accordance with the staffing requirements of this Contract set forth in Section 16, ***Contractor Staffing***.
4. DCH, the Georgia Attorney General, federal officials as authorized by federal law or regulations, and the authorized representatives of these parties shall have access to all confidential information in accordance with the requirements of State and federal laws and regulations.

B. Business Associate Agreement.

Contractor shall sign and comply with Attachment E, ***Business Associate Agreement***, and shall sign and comply with amendments to the Business Associate Agreement necessary or deemed appropriate by DCH for compliance with HIPAA and HITECH and implementing regulations and guidance.

C. Information Security.

Contractor shall sign and comply with Attachment D, ***Confidentiality Statement for Safeguarding Information***. Contractor warrants that it shall comply with the information security requirements attached as Exhibit 8, ***System Security***, and shall implement the information security measures described in its responses to RFA Paragraphs 33 – 35, 204, 263-266.

25. TERMINATION OF CONTRACT

A. This Contract may be terminated by DCH, in whole or in part, for any or all of the following reasons:

1. Default by Contractor, upon thirty (30) Calendar Days' notice;

2. Convenience of DCH, upon thirty (30) Calendar Days' notice;
3. Immediately, in the event of Contractor's insolvency or declaration of bankruptcy;
4. Determination by DCH that the instability of the Contractor's financial condition threatens delivery of services and continued performance of Contractor's responsibilities, upon five (5) Calendar Days' notice;
5. Immediately, when sufficient appropriated funds no longer exist for the payment of DCH's obligation under this Contract.

B. In the event of termination, Contractor shall:

1. Stop work under the Contract on the date and to the extent specified in the notice of termination;
2. Place no further orders or subcontract for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
4. Assign to DCH, in the manner and to the extent directed by the DCH Director of Contracts Administration, all of the right, title, and interest of Contractor under the orders or subcontracts so terminated, in which case DCH shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. With the approval of the DCH Director of Contracts Administration, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the Contract;
6. Complete the performance of such part of the work as shall not have been terminated by the notice of termination; and,
7. Take such action as may be necessary, or as the DCH Director of Contracts Administration may direct, for the protection and preservation of any and all property or information related to the Contract that is in the possession of Contractor and in which DCH has or may acquire an interest.

C. Termination Claims.

After receipt of a notice of termination, Contractor shall submit to the DCH Director of Contracts Administration any termination claim in the form and with the certification prescribed by the DCH Director of Contracts Administration. Such claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination. Upon failure of Contractor to submit its termination claim within the time allowed, the DCH Director of Contracts Administration may, subject to any review required by the state procedures in effect as of the date of execution of the Contract, determine, on the basis of information available, the amount, if any, due to Contractor by reason of the termination and shall thereupon cause to be paid to Contractor the amount so determined.

Upon receipt of notice of termination, Contractor shall have no entitlement to receive any amount for lost revenues or anticipated profits or for expenditures associated with this or any other contract. Upon termination, DCH in its discretion may pay Contractor in accordance with the following:

1. At the contract price(s) for completed Deliverables and Administrative Services delivered to and accepted by DCH; and/or
2. At a price mutually agreed upon by Contractor and DCH for partially completed Deliverables.

In the event of the failure of Contractor and DCH to agree in whole or in part as to the amounts with respect to costs to be paid to Contractor in connection with the total or partial termination of work pursuant to this article, DCH shall determine, on the basis of information available, the amount, if any, due to Contractor by reason of termination.

D. Funding.

Notwithstanding any other provision of this Contract, the Parties acknowledge that institutions of the State are prohibited from pledging the credit of the State. At the sole discretion of DCH, this Contract shall terminate without further obligation of the State if the source of payment for DCH's obligation no longer exists or is insufficient. The certification by DCH of the events stated above shall be conclusive and not subject to appeal.

26. UNSATISFACTORY PERFORMANCE AND DAMAGES

A. Unsatisfactory Performance.

1. If DCH, in its sole discretion, determines that the Administrative Services and/or Deliverables are noncompliant, unacceptable, or unsatisfactory, or Contractor otherwise is in breach of this Contract, Contractor, after notice from DCH, agrees that it will make every attempt to remedy the

deficiency or breach, as further described in Section 7, ***Deliverables***.

2. Contractor acknowledges that its failure to meet those Deliverables identified as Performance Standards in Exhibit 4, ***Performance Guarantees***, will cause DCH substantial damage of types and in amounts which are difficult or impossible to ascertain exactly. The Parties further acknowledge and agree that the liquidated damages described as performance guarantees or performance guarantee assessments in Exhibit 4 are the result of a good faith effort by DCH to estimate the actual harm caused by Contractor's failure to meet the Performance Standards and are not intended to be in the nature of a penalty. Accordingly, Contractor agrees that DCH may assess the liquidated damages against Contractor for failure to meet the Performance Standards. DCH may deduct the amounts due to DCH for performance guarantee assessments from any fees or other compensation payable to Contractor or DCH may require Contractor to remit such amounts within thirty (30) Calendar Days following DCH's written notice of the assessment. At DCH's sole discretion, DCH may also elect to obtain payment of such amounts through the irrevocable letter of credit furnished by Contractor..
3. For Deliverables set forth in this instrument or in the RFA or Approach that are not listed as Performance Standards in Exhibit 4, DCH may delay payment of a percentage of Administrative Fees or a flat dollar amount per day or per month until the Deliverable is accepted.
4. Cooperation among the SHBP Vendors is a requirement of the Contract, and another SHBP Vendor's failure to cooperate with Contractor will not excuse Contractor's failure to meet a Deliverable, and will not impact DCH's delay of payments. To promote swift resolution of the problem, if DCH agrees that another SHBP Vendor's failure to cooperate or perform a task prevents Contractor from meeting a Deliverable, DCH will delay payment of a percentage of Administrative Fees or a flat dollar amount per day from the other SHBP Vendor until that SHBP Vendor's task is complete.
5. Contractor's cooperation with other SHBP Vendors is a requirement of the Contract. If Contractor fails to cooperate with another SHBP Vendor, and this failure to cooperate contributes to that SHBP Vendor's failure to meet a Deliverable, DCH will delay payment of a percentage of Administrative Fees or a flat dollar amount per day until Contractor's task is complete.
6. In addition to the performance guarantee assessments payment offsets and payment delays described above, should Contractor at any time: (1) fail to provide the Administrative Services and/or Deliverables in accordance with the timeframes, schedule or dates set forth in this Contract; (2) fail in the performance of any term or condition contained in this Contract; or (3)

knowingly or unknowingly accept payment from DCH of an amount in excess of what it is owed at the time of the payment under the terms of this Contract, then DCH may (in addition to any other contractual, legal or equitable remedies) proceed to take any one or more of the following actions after five (5) Calendar Days' written notice to Contractor, in its sole discretion:

- a. delay payment of any monies due to Contractor;
- b. obtain the Administrative Services and/or Deliverables or their equivalent from a third party, pay the third party for same, and offset the amount so paid to third party from any money then or thereafter due to Contractor;
- c. direct Contractor to pay DCH within thirty (30) Calendar Days the amount of any overpayment previously made to Contractor as Administrative Fees, in which case Contractor shall make such payments within such thirty (30) Calendar Days;
- d. direct Contractor to pay DCH within thirty (30) Calendar Days the amount Contractor paid to any provider provider or that Contractor authorized the TPA Vendor to pay any provider that exceeded the amount payable under the terms of the Plan Documents, in which case Contractor shall make such payments within such thirty (30) Calendar Days;
- e. direct Contractor to pay DCH within thirty (30) Calendar Days the amount of DCH's reasonable estimate of the damage caused by any deficiency or delay in the Administrative Services and/or Deliverables, in which case Contractor shall make such payments within such thirty (30) Calendar Days;
- f. direct Contractor to pay DCH within thirty (3) Calendar Days the amount of any fees or penalties assessed against DCH as a result of Contractor's acts or omissions, in which case Contractor shall make such payments within such thirty (30) Calendar Days;
- g. obtain payments described in (c) through (f) above through Contractor's Irrevocable Letter of Credit;
- h. offset any payments due Contractor by an amount described in (c) through (f) above and;
- i. withhold from any payments due Contractor an amount described in (c) through (f) above.

7. In addition to the consequences and remedies indicated above, if DCH determines that Contractor knowingly submitted any false statement, invoice or other document to DCH, Contractor shall also be subject to the sanctions imposed by O.C.G.A. §16-10-20.
- B. Contractor acknowledges, affirms, ratifies, and agrees that all damages provisions set forth herein meet the criteria for enforceable damages that are reasonable, appropriate, and necessary.
- C. DCH reserves the right to seek all other reasonable and appropriate remedies available at law and in equity with respect to this Contract, including but not limited to special, consequential, punitive, equitable and other similar damages and relief.
- D. The Parties agree that disputes arising under this Section 26 shall be handled through negotiations with DCH Vendor Management. If such dispute cannot be resolved, the parties will follow the Conflict Resolution Process in Section 31, ***Conflict Resolution***. Pending final determination of any dispute, Contractor shall proceed diligently with performance of this Contract and in accordance with the direction of DCH.

27. INDEMNIFICATION

- A. Contractor hereby releases and shall indemnify, defend and hold harmless DCH, the State, its departments, agencies and instrumentalities (including but not limited to the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, The State Employee Broad Form Liability Funds, the State Insurance and Hazard Reserve Fund, and other self-insured funds, (together, the "Funds") and their respective affiliates and agents and each of their current or former officers, directors, and employees (collectively the "Indemnified Parties"), in individual and official capacities from and against any and all claims, demands, liabilities, losses, costs or expenses, and attorneys' fees, caused by, growing out of, or arising from this Contract, due to any act or omission on the part of Contractor or its Subcontractors, or any of their agents, employees, contract workers, customers, invitees, licensees or others working at any of their direction or on any of their behalf, or due to any breach of this Contract by Contractor, its Subcontractors or any of their agents, employees, contract workers, customers, invitees, licensees or others working at any of their direction or on any of their behalf, or due to the application or violation of any pertinent federal, State or local law, rule or regulation.
- B. DCH shall promptly give Contractor notice of any such claim; provided, however, DCH's failure to provide Contractor prompt notice of such claim shall not relieve Contractor of its indemnification, defense, release and hold harmless obligations except to the extent Contractor is prejudiced thereby. Subject to the prerogatives of the Office of the Attorney General of Georgia, Contractor may be granted sole

control of the defense and all related settlement negotiations. No settlement shall be binding against the State without the State’s written consent.

- C. These indemnification defense, release and hold harmless obligations extend to the successors and assigns of Contractor, and survive the termination or expiration of this Contract and the dissolution or, to the extent allowed by law, the bankruptcy of Contractor.

28. **INSURANCE**

Contractor shall, at a minimum, prior to the commencement of work, procure the insurance policies identified herein at Contractor’s own cost and expense and shall furnish DCH with proof of coverage at least in the amounts indicated. It shall be the responsibility of Contractor to require any Subcontractor to secure the same insurance coverage as prescribed herein for Contractor, and to obtain a certificate evidencing that such insurance is in effect. In addition, Contractor shall indemnify and hold harmless DCH and the State from any liability arising out of Contractor’s or Subcontractor’s untimely failure in securing adequate insurance coverage as prescribed herein:

- A. Professional Liability Insurance \$3,000,000.00 per occurrence
- B. Workers’ Compensation Insurance, the policies to insure the statutory limits established by the General Assembly of the State of Georgia. The Workers’ Compensation Policy must include Coverage B – Employer’s Liability Limits of:

Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 each employee \$1,000,000 policy limits

Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Worker’s Compensation Coverage.

- C. Commercial General Liability Policy (ies) as follows:

Combined Single Limits:	\$1,000,000 per occurrence \$3,000,000 aggregate
-------------------------	---

The Commercial General Liability Policy must be on an “occurrence” basis.

- D. Liability for property damage in the amount of \$3,000,000.00, including contents coverage for all records maintained pursuant to this Contract.
- E. Errors & Omissions coverage in the amount of \$10,000,000.

- F. Cyber Security Coverage with coverage of not less than \$5,000,000 per loss, which shall at a minimum cover occurrences falling in the following categories: Cyber-liability and Data Breach Coverage.
- G. Crime Coverage with coverage of not less than \$5,000,000 per loss, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

29. IRREVOCABLE LETTER OF CREDIT

- A. Contractor shall obtain at Contractor's own expense, an Irrevocable Letter of Credit, issued by an FDIC insured financial institution authorized to do business in the State of Georgia in the amount of one year's worth of projected Administrative Fees, based on the number of Employees enrolled in SHBP Plan Options on the Effective Date.
- B. Contractor shall adjust the Irrevocable Letter of Credit after the annual enrollment period to reflect one year's worth of projected Administrative Fees, based on the actual enrollment in Contractor's Plan Options.
- C. Contractor shall deliver the Irrevocable Letter of Credit to DCH within forty-five (45) Calendar Days of the Effective Date, and shall deliver replacement Irrevocable Letters of Credit to DCH as required in Section 29.B within forty-five (45) Calendar Days after the end of each annual enrollment period.
- D. The Irrevocable Letter of Credit shall list DCH as beneficiary and shall be subject to approval and acceptance by DCH. The Irrevocable Letter of Credit shall be in the form indicated in Exhibit 6.
- E. The Irrevocable Letter of Credit must cover the period beginning with the Effective Date of the Contract through the life of the Contract and resolution of all claims and litigation related to the Contract, including but not limited to any and all amendments, renewals and extensions. The amount of the Letter of Credit must be adjusted annually as required above to reflect projected Administrative Fees for the following year.
- F. The Irrevocable Letter of Credit may be redeemed by DCH if DCH determines that Contractor is (1) in default of its obligations to DCH, or if (2) the Contract is terminated due to Contractor's default or bankruptcy or material breach.

30. COMPLIANCE WITH ALL LAWS

- A. Non-Discrimination.

Contractor agrees to comply with applicable federal and state laws, rules and regulations, and the State's policy relative to nondiscrimination in employment practices because of political affiliation, religion, race, color, sex, physical

handicap, age, or national origin. Nondiscrimination in employment practices is applicable to employees for employment, promotions, dismissal and other elements affecting employment.

B. Delivery of Service and Other Federal Laws.

1. Contractor agrees that all work performed pursuant to this Contract shall comply fully with all applicable laws, statutes, case law, codes, rules, regulations, and procedures (whether administrative or otherwise) whether federal or State, throughout the Term of the Contract. This requirement applies to laws, regulations and guidance that are issued during the Term of the Contract. Contractor agrees to comply with all applicable laws, regulations, and guidelines, including but not limited to the laws that establish the SHBP, DCH Regulations, Policies and Procedures, the Patient Protection and Affordable Care Act, the Public Health Services Act, HIPAA and HITECH, and agrees to fully reimburse DCH for any loss of funds or resources or overpayment resulting from non-compliance by Contractor, its staff, agents or Subcontractors, as revealed in subsequent audits.
2. The provisions of the Fair Labor Standards Act of 1938 (29 USC § 201 *et seq.*) and the rules and regulations as promulgated by the United States Department of Labor in Title XXIX of the Code of Federal Regulations are applicable to this Contract. Contractor shall agree to conform with such federal laws as they affect the delivery of services under this Contract including but not limited to Titles VI, VII, XIX of the Social Security Act, the Federal Rehabilitation Act of 1973, the Davis Bacon Act (40 USC § 276a *et seq.*), the Copeland Anti-Kickback Act (40 USC § 276c), and the Americans with Disability Act of 1990 (including but not limited to 28 C.F.R. § 35.100 *et seq.*). Contractor will agree to conform to such requirements or regulations as the United States Department of Health and Human Services may issue from time to time.

C. Cost of Compliance with Applicable Laws.

The Contractor agrees that it will bear any and all costs (including but not limited to attorneys' fees, accounting fees, research costs, or consultant costs) related to, arising from, or caused by compliance with any and all laws, such as but not limited to federal and state statutes, case law, precedent, regulations, policies, and procedures which exist at the time of the execution of this Contract. The Contractor further agrees that it will bear any and all costs (including but not limited to attorneys' fees, accounting fees, research costs, or consultant costs) related to, arising from, or caused by compliance with any and all laws, such as but not limited to federal and state statutes, case law, precedent, regulations, policies, and procedures which become effective or are amended throughout the

life of the Contract. In the event of a disagreement on this matter, the Department's determination on this matter shall be conclusive and not subject to appeal.

D. General Compliance.

Additionally, the Contractor agrees to comply and abide by all laws, rules, regulations, statutes, policies, or procedures that may govern the Contract, the Deliverables, or either Party's responsibilities. To the extent that applicable laws, rules, regulations, statutes, policies, or procedures – either those in effect at the time of the execution of this Contract, or those which become effective or are amended during the life of the Contract – require the Contractor to take action or inaction, any costs, expenses, or fees associated with that action or inaction shall be borne and paid by the Contractor solely.

31. **CONFLICT RESOLUTION**

A. Good Faith Efforts.

Except for the right of either Party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Contract, including but not limited to payment disputes, through negotiations between senior management of the parties.

B. Resolution.

If the dispute cannot be resolved within thirty (30) Calendar Days of initiating such negotiations, the dispute shall be decided by DCH Director of Contract Administration, who shall reduce his or her decision to writing and mail or otherwise furnish a copy to Contractor.

C. Appeal.

The written decision of DCH Director of Contracts Administration shall be final and conclusive, unless Contractor mails or otherwise furnishes a written appeal to the Commissioner of DCH within ten (10) Calendar Days from the date of receipt of such decision. The decision of the Commissioner or his duly authorized representative for the determination of such appeal shall be final and conclusive.

D. Other Remedies.

If either Party is dissatisfied, after exhausting the administrative process described above, that Party may pursue its available legal and equitable remedies, subject to the terms and conditions of this Contract.

E. Continuation of Work.

Contractor and DCH agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract and retain the right to exercise their available remedies.

32. CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE

- A. No official or employee of the State of Georgia or the federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the responsibilities set forth in this Contract shall, prior to the termination or expiration of this Contract, voluntarily acquire any personal interest, direct or indirect, in this Contract.
- B. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any material manner or degree with, or have a material adverse effect on the performance of the Administrative Services. Contractor further covenants that in the performance of the Contract no person having any such interest shall be employed.
- C. The Parties hereby certify that the provisions of O.C.G.A. §45-10-20 through §45-10-28, which prohibit and regulate certain transactions between state officials and employees and the State of Georgia, have not been violated and will not be violated in any respect throughout the duration of this Contract.
- D. In addition, it shall be the responsibility of Contractor to maintain independence and to establish necessary policies and procedures to assist Contractor in determining if the actual individuals performing work under this Contract have any impairment to their independence. To that end, Contractor shall submit a written plan to DCH within five (5) Business Days of the execution of this Contract, or such later date as approved in writing by the DCH Program Manager, in which it outlines Contractor's policies and procedures relating to how it monitors and enforces such individuals' impartiality and independence. Contractor also shall take all necessary actions to eliminate threats to impartiality and independence, including but not limited to reassigning, removing or terminating individuals performing Administrative Services under the Contract.

33. NOTICE

- A. All notices under this Contract shall be deemed duly given upon delivery, if delivered by hand, or three (3) Calendar Days after posting, if sent by registered or certified mail, return receipt requested, to a Party hereto at the addresses set forth below or to such other address as a Party may designate by notice pursuant hereto. In addition, all notices delivered by email and personally acknowledged by the recipient as received in a reply email (not to include an auto-generated reply email) are deemed delivered at the time of the recipient's reply email.

For DCH:

DCH Director of Contracts Administration:

Director of Contracts Administration
Georgia Department of Community Health
2 Peachtree Street, NW - 40th Floor
Atlanta, GA 30303-3159

Program Manager:

Chief, State Health Benefit Plan
Two Peachtree Street NW
35th Floor
Atlanta, GA 30303
ATTN: Trudie Nacin

[INSERT]

For Contractor:

[INSERT]

- B. It shall be the responsibility of Contractor to inform the Program Manager and the DCH Director of Contracts Administration of any change in address in writing no later than five (5) Business Days after the change.
- C. Within two (2) Business Days of receipt of notice, Contractor shall inform DCH of any legal action, whether the action is formal, informal, administrative, mediation, arbitration, actual litigation, or proposed litigation, which is instituted against Contractor by a Subcontractor, vendor, supplier, or manufacturer.
- D. Contractor shall inform DCH within twenty-four (24) hours of any legal action, whether the action is formal, informal, administrative, mediation, arbitration, actual litigation, or proposed litigation, that it knows, knew, or should have known would be instituted or brought against Contractor for work based on, arising from, or related to this Contract.

34. MISCELLANEOUS

A. Governing Law, Venue, Jurisdiction, Process.

This Contract shall be governed by, construed under and enforced in accordance with the laws of the State of Georgia, without regard to its conflicts of laws rules.

Any lawsuit or other action brought against DCH or the State based upon or arising from this Contract must be brought in a court or other forum of competent jurisdiction in Fulton County in the State of Georgia and the Parties hereto consent, and waive any objection, to personal jurisdiction and venue in any federal and state courts located in the State of Georgia.

B. Attorneys' Fees.

In the event that either Party deems it necessary to take legal action to enforce any provision of the Contract, and in the event DCH prevails, Contractor shall pay all expenses of such action including reasonable attorney's fees and costs at all stages of litigation as awarded by the court, a lawful tribunal, hearing officer or administrative law judge. The term "legal action" shall be deemed to include administrative proceedings of all kinds, as well as all actions at law or equity.

C. Survivability.

The terms, provisions, representations and warranties contained in this Contract shall survive the delivery or provision of all Administrative Services or Deliverables hereunder.

D. Drug-Free Workplace.

Contractor must certify to DCH that a drug-free workplace will be provided by it and its Subcontractors during the performance of this Contract as required by the "Drug-Free Workplace Act", O.C.G.A. § 50-24-1, et seq. and certify compliance with applicable federal law as set forth in Attachment G, ***Drug Free Workplace Certificate***. Contractor shall sign and comply with Attachment G. Any false certification by Contractor or violation of such certification, or failure to carry out the requirements set forth in State of Georgia or federal statutes, rules, regulations, policies, or guidelines relating to a drug free workplace may result in Contractor being suspended, terminated or debarred from the performance of this Contract.

E. Certification Regarding Debarment, Suspension, Proposed Debarment and Other Matters.

Contractor certifies that it is not presently debarred, suspended, proposed for debarment or declared ineligible for award of contracts by any federal or State agency or department. Contractor certifies that none of its Workers nor any Subcontractor or Subcontractor's Workers are presently debarred, suspended, proposed for debarment or declared ineligible for award of contracts by any federal or State agency or department.

F. Waiver.

No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the Parties. Forbearance or indulgence in any form or manner by either Party, in any regard whatsoever, shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply. Notwithstanding any such forbearance or indulgence, until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other Party shall have the right to invoke any remedy available under the Contract.

G. Force Majeure.

Neither party to this Contract shall be responsible for delays or failures in performance resulting from acts beyond the reasonable control of such Party. Such acts shall include, but not be limited to, acts of God, strikes, riots, lockouts, acts of war, epidemics, fire, earthquakes, or other disasters.

H. Binding.

This Contract and all of its terms, conditions, requirements, and amendments shall be binding on DCH and Contractor and their respective successors and permitted assigns.

I. Time is of the Essence.

Time is of the essence in connection with Contractor's performance of its obligations under this Contract. Any reference to "days" shall be deemed Calendar Days unless otherwise specifically stated.

J. Authority.

The individuals acting on behalf of and signing for DCH and Contractor have full power and authority to enter into this Contract. The person acting on behalf of and signing for Contractor has been properly authorized and empowered to enter into this Contract on behalf of Contractor and to bind Contractor to the terms of this Contract.

K. Ethics in Public Contracting.

1. Contractor understands, states, and certifies that it made its proposal without collusion or fraud and that it did not offer or receive any kickbacks or other inducements from any other contractor, supplier, manufacturer, or Subcontractor in connection with its proposal.
2. Contractor shall sign and comply with all Attachments to this Contract.

L. Contract Language Interpretation.

Contractor and DCH agree that in the event of a disagreement regarding, arising out of, or related to contract language interpretation, DCH's interpretation of the contract language in dispute shall control and govern. DCH's interpretation of the contract language in dispute shall not be subject to appeal under any circumstance.

M. Cooperation with Other Contractors.

1. DCH may undertake or award supplemental contracts for work related to this Contract, or any portion thereof. Contractor shall cooperate with such other contractors and DCH in all such cases. Contractor shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.
2. Contractor shall cooperate fully with any other entity that DCH has engaged to perform services related to the SHBP, and shall share information related to this Contract with such entities upon written request of DCH, and in accordance with information sharing requirements of the Implementation Plan. Contractor shall ensure that all Subcontractors shall abide by this provision. This cooperation includes but is not limited to ongoing, prompt and efficient communications for purposes of timely processing and payment of claims, and ensuring that the Nurse Line, Disease Management, Case Management and other wellness and preventive services are made available to Members on an ongoing and timely basis.
3. During Implementation, if requested by DCH, Contractor shall execute cooperation, confidentiality and data sharing agreements with other entities providing services related to the SHBP in order to ensure that all entities providing services related to the SHBP are able to satisfy their Deliverables. Contractor shall ensure that all Subcontractors shall abide by this provision.
4. Contractor shall provide DCH, SHBP Vendors and the decision support system vendor described in the RFA access to data required to properly perform their required services and to support the SHBP programs' operations.
5. Contractor shall utilize information and data provided by other SHBP Vendors and DCH correctly and in a timely fashion. Contractor shall use

this information and data in accordance with the RFA, Performance Guarantees set forth in Exhibit 4 and the Contractor's Approach. In the event there is a performance issue:

- a) Contractor will be held accountable for the accuracy and timeliness of Contractor's utilization and handling of the data provided to the Contractor.
- b) Contractor will be held accountable for the accuracy and timeliness of the data and information provided by Contractor to DCH, the other SHBP Vendors and the decision support system vendor.
- c) The Contractor will not be held accountable for the accuracy and timeliness of other parties' utilization and handling of the data provided by Contractor.
- d) The Contractor will not be held accountable for the accuracy and timeliness of the data and information provided to Contractor by DCH and the other SHBP Vendor(s).

N. Section Titles not Controlling.

The section titles used in this Contract are for reference purposes only and shall not be deemed a part of this Contract.

O. Cooperation with Audits.

- 1. The State and federal standards for audits of DCH agents, contractors, and programs are applicable to this Section 34.O and are incorporated by reference into this Contract as though fully set out herein.
- 2. Contractor shall assist and cooperate with DCH in any and all matters and activities related to or arising out of any audit or review, whether federal, private, or internal in nature, at no cost to DCH.
- 3. Contractor shall be solely responsible for any costs it incurs for any audit or review related inquiries or matters specific to this Contract. Moreover, Contractor may not charge or collect any fees or compensation from DCH for any matter, activity, or inquiry related to, arising out of, or based on an audit or review.
 - a. Programmatic Audits. During the term of the Contract, and at any time within eighteen (18) months following its termination or expiration, DCH, or an entity selected by DCH, may conduct programmatic audits to determine whether Contractor is fulfilling the terms of this Contract or to analyze the quality, effectiveness,

and/or efficiency of Contractor's Administrative Services, or for any other reasonable purpose identified by DCH. Such audits may include review of procedures, as well as mechanical and/or systematic review of electronic information, records and systems, and system security. No Exhibit to this Contract or other document shall be construed to limit or restrict DCH's right to audit in any manner. DCH may also conduct site visits to review and audit performance and compliance, and DCH requires Contractor to submit progress reports representative of performance or delivery of services associated with this Contract. Unless DCH or the State determine that there is a need for procedures without advance notice, DCH will advise Contractor in writing of DCH's intent to audit.

- b. EDP System Audits. Contractor shall authorize designated representatives of DCH, including, but not limited to, DCH employees in the Division of SHBP and Office of Inspector General, and individuals designated by the State Department of Audits, to have access to detailed EDP system documentation and all subsystems relevant to Administrative Services provided under this Contract at Contractor's facilities, as well as such other documentation related to the EDP System that is responsive to DCH's request. Access must be granted within two (2) weeks of the request. Documentation must include, but not be limited to file structures, program libraries, program logic, program edits, establishment of fee schedules, and interface programs or subsystems.

P. Homeland Security Considerations.

1. Contractor will not hire or contract with any individual to perform any of the Administrative Services if that individual is required to have a work visa approved by the U.S. Department of Homeland Security and such individual has not met this requirement.
2. If Contractor performs the Administrative Services or uses services in violation of the foregoing paragraph, Contractor shall be in material breach of this Contract and shall be liable to DCH for any costs, fees, damages, claims, or expenses it may incur. Additionally, Contractor shall be required to hold harmless and indemnify DCH pursuant to the indemnification provisions of this Contract.
3. The prohibitions in this Section 34.P shall also apply to all Subcontractors used by Contractor to perform any of the Administrative Services.

Q. Ownership and Financial Disclosures.

1. Contractor shall disclose financial statements for each person, corporation, or entity with an ownership or control interest of five percent (5%) or more in Contractor's entity for the prior twelve (12) consecutive calendar month period. For the purposes of this Section 34.Q, a person, corporation, or entity with an ownership or control interest shall mean a person, corporation, or entity that:
 - a. owns directly or indirectly five percent (5%) or more of Contractor's capital or stock or received five percent (5%) or more of its profits;
 - b. has an interest in any mortgage, deed of trust, note, or other obligation secured in whole or in part by Contractor or by its property or assets, and that interest is equal to or exceeds five percent (5%) of the total property and assets of Contractor; and,
 - c. is an officer or director of Contractor (if it is organized as a corporation) or is a partner in Contractor's organization (if it is organized as a partnership).
2. All ownership and financial disclosures shall occur when Contractor's Approach is submitted and updated or amended at least once every quarter, unless otherwise requested by DCH.

R. Enforceability.

If, for any reason, a court of competent jurisdiction finds any provision of this Contract, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Contract shall continue in full force and effect.

S. Legal Considerations.

Contractor acknowledges that nothing contained in this Contract shall be construed as a waiver of the immunity from liability, which would otherwise be available to the State under the principles of sovereign immunity. In particular, Contractor agrees that the sole and exclusive means for the presentation of any claim against the State arising out of this Contract, shall be in accordance with all applicable Georgia statutes and Contractor further covenants not to initiate legal proceedings in any state or federal court in addition to, or in lieu of, any proceedings available under State statutes.

T. Contract Drafting.

Each Party agrees that it has had an opportunity to have the legal counsel of its choice review, revise, edit, negotiate, and modify this Contract as needed or desired.

U. Limitation of Liability.

Nothing in this Contract shall limit Contractor's liability arising from, based on, or related to claims brought by DCH or any third party or any claims brought against DCH or the State by a third party or Contractor as a result of this Contract or Contractor's other acts or omissions.

V. Corrective Action Plan.

1. In the event of Contractor's failure to perform timely or correctly a task, obligation, or responsibility required by this Contract, the provisions of Section 26, ***Unsatisfactory Performance and Damages***, will apply. DCH, in its sole discretion, may allow Contractor to submit a detailed written Corrective Action Plan. Any Corrective Action Plan must provide: (1) a detailed explanation of the reasons for the cited deficiency; (2) Contractor's assessment or diagnosis of the deficiency's cause; and (3) a specified proposal to cure or resolve the deficiency.
2. Contractor agrees that any Corrective Action Plan permitted by DCH must be submitted within five (5) Calendar Days following DCH's grant of permission for such plan, or such later date as approved in writing by the DCH Program Manager.
3. Contractor agrees that DCH's acceptance of the Corrective Action Plan will not: (1) excuse Contractor's prior substandard performance; (2) delay or eliminate payment offsets, payment delays or damage assessments, (3) relieve Contractor of its duty to comply with Performance Standards; or (4) prohibit DCH from assessing additional tailored remedies or pursuing other appropriate remedies for continued substandard performance.
4. If approved in writing by the DCH Program Manager, DCH may provide credits for amounts previously offset, or damages previously assessed, upon Contractor's successful implementation of the Corrective Action Plan.

W. Quality of the Administrative Services. Contractor represents and warrants that the Administrative Services shall be performed in a professional manner. Contractor shall immediately re-perform Administrative Services which are not in compliance with such representations and warranties at no cost to DCH.

- X. Truth and Correctness. No representation or warranty by Contractor herein, nor any written statement or certificate or other instrument furnished to DCH by Contractor pursuant to this Agreement or in connection with the transactions contemplated by this Agreement, (i) contains, or will contain, any untrue statement of a material fact or (ii) omits, or will omit, to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which such statements are made, not misleading.

35. AMENDMENT IN WRITING

- A. No amendment, waiver, termination or discharge of this Contract, or any of the terms or provisions hereof, shall be binding upon either Party except as expressly permitted in this Contract and confirmed in writing. Except as set forth in 35.C below, the terms and provisions of this Contract may not be modified or amended except by formal amendment executed by both Parties in the same manner as this Contract is executed.
- B. If Contractor desires an amendment or modification to any provision, condition, or obligation contained in this Contract, including, but not limited to the offer of a new program or service, it must deliver a timely and written change order request to DCH that includes a detailed explanation of the proposed change, justification, and any and all potential cost implications, if any, for the proposed change. The change order request must include an explanation of how it will affect claims processing or benefits, and a statement approved by legal counsel for Contractor as to whether the change, if permitted, would cause any existing Plan Documents or communications to Members to be incorrect or misleading.
- C. If the change order request described in 35.B above does not have any potential cost implication, the DCH Program Manager may approve the change order in writing. However, the change shall not be implemented until any necessary changes to the Plan Documents or Member communications are approved by the Parties.
- D. Any agreement of the Parties to amend, modify, eliminate or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect as set out herein.

36. CONTRACT ASSIGNMENT

- A. The rights of DCH under this Contract may be assigned to any other agency of the State of Georgia, with ten (10) Calendar Days prior notice to Contractor.
- B. Contractor shall not assign this Contract, in whole or in part, without the prior written consent of DCH, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect. Any assignment or

transfer of any interest under the Contract, by Contractor, shall be made explicitly subject to all rights, defenses, set-offs, or counterclaims, which would have been available to DCH against Contractor in the absence of such assignment or transfer of interest. This provision includes but is not limited to reassignment of Contract due to change of ownership of Contractor's company.

37. SEVERABILITY

Any section, subsection, paragraph, term, condition, provision, or other part of this Contract that is judged, held, found or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect as set out herein. The Contract shall not be interpreted for or against any Party on the basis that such Party or its legal representatives caused part or all of the Contract to be drafted.

38. PROHIBITION OF CERTAIN CONTRACT PROVISIONS

Contractor acknowledges that pursuant to Georgia Constitution Article 3, Section 6, Paragraph 6, the Department is prohibited from entering into any contract that grants any donation or gratuity or forgives any debt or obligation owing to the public.

39. COUNTERPARTS

This Contract may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument. Any signature below that is transmitted by facsimile or other electronic means shall be binding and effective as the original.

40. ENTIRE CONTRACT

This Contract, including all incorporated documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or contracts. No written or oral agreements, representatives, statements, negotiations, understandings, or discussions that are not set out, referenced, or specifically incorporated in this Contract shall in any way be binding or of effect between the Parties.

(Signatures on following page)

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties state and affirm that they are duly authorized to bind the respective entities designated below as of the day and year indicated.

GEORGIA DEPARTMENT OF COMMUNITY HEALTH

David A. Cook, Commissioner

Date

Trudie Nacin, Chief – State Health Benefit Plan

Date

<INSERT CONTRACTOR>

BY: _____
Signature

Date

Name

Title

AFFIX CORPORATE SEAL HERE
(Corporations without a seal should attach
a copy of the Certificate of Corporate Resolution)

ATTEST: _____
**SIGNATURE

Name

Title

* Must be President, Vice President, CEO or other authorized officer

**Must be Corporate Secretary

EXHIBIT 1

REQUEST FOR APPROACH

EXHIBIT 2

CONTRACTOR'S APPROACH

EXHIBIT 3

ADMINISTRATIVE SERVICES AND FEES

PERFORMANCE GUARANTEES

EXHIBIT 5

DISASTER RECOVERY PLAN

IRREVOCABLE LETTER OF CREDIT

LETTER OF CREDIT DRAFT IN LIEU OF RETENTION SAMPLE

ISSUING BANK: [BANK'S NAME]
[BANK'S ADDRESS]

BENEFICIARY: THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH
2 PEACHTREE STREET, NW-40th Floor
ATLANTA, GA 30303-3159
ATTN: CONTACT NAME

AT THE REQUEST AND FOR THE ACCOUNT OF [CONTRACTOR'S NAME],
WE HEREBY ISSUE THIS IRREVOCABLE STANDBY LETTER OF CREDIT IN THE
AMOUNT OF (\$_____), WHICH IS AVAILABLE AGAINST SIGHT DRAFT(S) OF THE
BENEFICIARY BEARING THE CLAUSE "DRAWN UNDER IRREVOCABLE STAND-BY
LETTER OF CREDIT NUMBER _____" AND ACCOMPANIED BY THE
FOLLOWING DOCUMENTS:

1. A CERTIFICATE DATED AND SIGNED BY A PURPORTED AUTHORIZED
OFFICER OF THE BENEFICIARY STATING: "WE CERTIFY THAT THE
AMOUNT OF OUR DRAWING UNDER LETTER OF CREDIT NUMBER
IS DUE US AS [CONTRACTOR'S NAME] IS IN DEFAULT OF
ITS OBLIGATIONS WITH US UNDER CONTRACT NO. _____
DATED _____."
2. A CERTIFICATE DATED AND SIGNED BY A PURPORTED AUTHORIZED
OFFICER OF THE BENEFICIARY STATING: "WE CERTIFY THAT THE
AMOUNT OF THE DRAFT PRESENTED DOES NOT EXCEED THE GREATER OF
THE AMOUNT ALLOWED PURSUANT TO EXHIBIT 1 OF SAID CONTRACT OR THE
AMOUNT IN DISPUTE LESS ANY AMOUNTS PREVIOUSLY DRAWN UNDER THIS
LETTER OF CREDIT.
3. A COPY OF THE LETTER DATED AT LEAST SEVENTY-TWO (72) HOURS
PRIOR TO THE DRAWING UNDER THIS LETTER OF CREDIT ADDRESSED
TO [CONTRACTOR'S NAME] READING AS FOLLOWS: "WE HEREBY INDICATE
OUR INTENTION TO DRAW UNDER _____ BANK LETTER OF
CREDIT NO. _____."

WE ENGAGE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE
WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON

DELIVERY OF DOCUMENTS AS SPECIFIED IF PRESENTED AT THIS OFFICE ON
OR BEFORE _____, 200__.

PARTIAL DRAWINGS ARE PERMITTED.

ALL AMOUNTS DRAWN IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF
THIS LETTER OF CREDIT WILL BE TRANSFERRED BY WIRE TRANSFER INTO
THE BENEFICIARY'S ACCOUNT NUMBER _____ IN
_____(BANK). ABA
NO. _____(CITY), _____
_____(STATE).

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND
PRACTICES FOR DOCUMENTARY CREDITS (1983 REVISION). INTERNATIONAL
CHAMBER OF COMMERCE PUBLICATION 500.

INTENTIONALLY RESERVED

EXHIBIT 8**INFORMATION SECURITY**

SR.1	Contractor shall comply with the HIPAA Final Security Rule, 45 CFR PART 164 – Security and Privacy, and all implementing regulations
SR.2	Contractor's security policies and procedures and implementation of the same shall align with the most current version of the following Federal Computer Security Standards as published by the National Institute of Standards and Technology (NIST) 800-53 controls: <ul style="list-style-type: none">• NIST, FIPS 197 Advanced Encryption Standard (AES).• NIST, FIPS 140-2, Security Requirements for Cryptographic Modules, Level 1 (or Higher).• NIST Special Publication SP800-53, Recommended Security Controls For Federal Information Systems and Organizations, Moderate-Impact Baseline
SR.3	Contractor's security policies and procedures and implementation of the same shall align with applicable State Enterprise Information Security Policies and Standards including Standards for Media Sanitization and Destruction that are based on NIST and ISO/IEC 27701 standards. State Security Policies can be found at the following Web Page Link: http://gta.georgia.gov/security-psgs-homepage .
SR4	All DCH data containing electronic Protected Health Information (ePHI) shall be encrypted during transmission, while stored in portable media devices, and preferably while "at rest." If encryption of ePHI at rest is not feasible, Contractor shall implement comparable safeguards acceptable to the DCH Information Security Officer.
SR.5	Contractor shall include the same safeguards and procedures for protecting DCH data, including but not limited to DCH ePHI, during emergency operations as are utilized during normal business operations.
SR.6	Contractor's information systems that contain DCH data shall alert appropriate staff authorities of potential violations of security safeguards, such as inappropriate access to confidential information, and shall contain mechanisms to monitor transaction based event and activity Logging.
SR.7	All system users must be authenticated when establishing a connection to any information system that contains DCH System. Authentication must be based on unique user IDs/passwords.
SR.8	Contractor shall provide standard, secure, and configurable interfaces between all interfacing information sharing entities.
SR.9	Contractor shall comply with its own internal Incident Response policies and procedures.
SR.10	Contractor shall implement the appropriate infrastructure protection measures to protect sensitive system and application data including Network/Host Intrusion Prevention and Detection Devices, Firewalls, Virus Protection, etc.
SR.11	Contractor shall ensure that all system software and hardware changes follow Contractor's formal change management procedures, including security impact analysis. Contractor shall ensure that DCH data is logically separated from non DCH data
SR.12	Contractor's solution shall include the appropriate controls and safeguards for preventing, monitoring, and detecting malware (e.g., viruses, worms, trojans, or other malicious program code).

ATTACHMENT A

DRUG-FREE WORKPLACE CERTIFICATE

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988 and O.C.G.A. § 50-24-1 *et seq.* The certification set out below is a material representation of fact upon which DCH relied when entering into Contract # [insert contract number] with [insert vendor name] (hereinafter referred to as the “Contractor”). False certification or violation of the certification shall be grounds for suspension of payments, termination of the contract, or government-wide suspension or debarment.

By signing this Drug-Free Workplace Certificate, Contractor certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession or use of a controlled substance or marijuana is prohibited in Contractor’s workplace and specifying the actions that will be taken against employees for violations of such policy;
2. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. Contractor’s policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations;
3. Providing each employee with a copy of the statement provided for in paragraph (1) of this certification;
4. Notifying each employee in the statement provided for in paragraph (1) that, as a condition of employment, the employee shall:
 - a. Abide by the terms of the statement; and
 - b. Notify Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five calendar days after such conviction;
5. Notifying DCH within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction;
6. Taking one of the following actions, within 30 days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted;
 - a. Taking appropriate personnel action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.

Further, Contractor certifies that it will include in any agreement or contract with a subcontractor a provision that such subcontractor will provide a drug-free workplace for his employees by complying with the provisions of paragraphs (1), (2), (3), (4), and (6) of this subsection and by notifying Contractor of any criminal drug statute conviction for a violation occurring in the workplace involving the subcontractor or its employees within five calendar days of receiving notice of the conviction. Contractor will notify the contracting principal representative pursuant to paragraph (5) of this subsection.

CONTRACTOR

BY: _____
SIGNATURE DATE

TITLE

ATTEST: _____
SIGNATURE DATE

TITLE

* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED
DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**



**Federal Acquisition Regulation (FAR) 52.209-5, Certification Regarding
Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (April
2010)**

(A) Contractor certifies, to the best of its knowledge and belief, that:

(1) Contractor and/or any of its Principals:

- A. Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any Federal agency;
- B. Have ☐ have not ☐ within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws or receiving stolen property;
- C. Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in subdivision (A)(1) of this provision; and
- D. Have ☐ have not ☐ within the three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000.00 for which the liability remains unsatisfied (per FAR 52-209-5(a)(1)(i)(D)(1)).

(2) Contractor has ☐ has not ☐ within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(3) "Principals," for purposes of this certification, means officers, directors, owners, partners, and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment; and similar positions).

(B) This certification concerns a matter within the jurisdiction of an Agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. § 1001.

- (C) Contractor shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (D) A certification that if any of the items in paragraph (A) of this provision exist will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Contractor's responsibility. Failure of the Contractor to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Contractor non-responsible.
- (E) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (A) of this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (F) The certification in paragraph (A) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

CONTRACTOR

By:

Signature

Date

Print Name and Title*

* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH
NON-PROFIT ORGANIZATION DISCLOSURE FORM**

Notice to all DCH Contractors: Pursuant to Georgia law, non-profit organizations that receive funds from a state organization must comply with audit requirements as specified in O.C.G.A. § 50-20-1 *et seq.* (hereinafter “the Act”) to ensure appropriate use of public funds. “Non-profit Organization” means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve or expand its operations. The term non-profit organization includes non-profit institutions of higher education and hospitals. For financial reporting purposes, guidelines issued by the American Institute of Certified Public Accountants should be followed in determining non-profit status.

The Department of Community Health (DCH) must report contracts with non-profit organizations to the Department of Audits and must ensure compliance with the other requirements of the Act. Prior to execution of any contract, the potential contractor must complete this form disclosing its corporate status to DCH. This form must be returned, along with proof of corporate status, to: Director, Contract Administration, Georgia Department of Community Health, 40th Floor, 2 Peachtree Street, N.W., Atlanta, Georgia 30303-3159.

Acceptable proof of corporate status includes, but is not limited to, the following documentation:

- Financial statements for the previous year;
- Employee list;
- Employee salaries;
- Employees’ reimbursable expenses; and
- Corrective action plans.

Entities that meet the definition of non-profit organization provided above and are subject to the requirements of the Act will be contacted by DCH for further information.

COMPANY NAME: _____

ADDRESS: _____

PHONE: _____ **FAX:** _____

CORPORATE STATUS: (check one) For Profit _____ Non-Profit _____

I, the undersigned duly authorized representative of _____ do hereby attest that the above information is true and correct to the best of my knowledge.

Signature

Date

CONFIDENTIALITY STATEMENT

**STATE OF GEORGIA
THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH
2 PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30303-3159**

FOR SAFEGUARDING INFORMATION

I, the undersigned, understand and, by my signature, agree to comply with Federal and State requirements regarding the safeguarding of the Department of Community Health/State Health Benefit Plan information in my possession, including but not limited to information that is obtained electronically from the Fiscal Agent, vendors, or any other entity or individual while performing contractual services with or for the Department of Community Health, its agents or contractors.

Individual's Name: (typed or printed): _____

Signature: _____ Date: _____

Telephone No.: _____

Company or Agency Name and Address: _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (hereinafter referred to as “Agreement”), effective this _____ day of _____, _____ (hereinafter the “Effective Date”) is made and entered into by and between the Georgia Department of Community Health (hereinafter referred to as “DCH”) and [INSERT CONTRACTOR NAME] (hereinafter referred to as “Contractor”) as **EXHIBIT XX** to **Contract No. XXXX** between DCH and Contractor dated _____ (hereinafter referred to as the “Contract”).

WHEREAS, DCH is required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), to enter into a Business Associate Agreement with certain entities that provide functions, activities, or services involving the use of Protected Health Information, as defined by HIPAA (“PHI”);

WHEREAS, Contractor, under the Contract provides functions, activities, or services involving the use of PHI;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCH and Contractor (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms have in HIPAA and in Title XIII of the American Recovery and Reinvestment Act of 2009 (the Health Information Technology for Economic and Clinical Health Act, or “HITECH”), and in the implementing regulations of HIPAA and HITECH. Implementing regulations are published as the Standards for Privacy and Security of Individually Identifiable Health Information in 45 C.F.R. Parts 160 and 164. Together, HIPAA, HITECH, and their implementing regulations are referred to in this Agreement as the “Privacy Rule and Security Rule.” If the meaning of any defined term is changed by law or regulation, then this Agreement will be automatically modified to conform to such change.

1. Except as limited in this Agreement, Contractor may use or disclose PHI only to the extent necessary to meet its responsibilities as set forth in the Contract provided that such use or disclosure would not violate the Privacy Rule or the Security Rule, if done by DCH. Furthermore, except as otherwise limited in this Agreement, Contractor may:
 - A. Use PHI for internal quality control and auditing purposes.
 - B. Use or disclose PHI as Required by Law.
 - C. After providing written notification to DCH’s Office of Inspector General, use PHI to make a report to a health oversight agency authorized by law to investigate DCH (or otherwise oversee the conduct or conditions of the DCH) about any DCH conduct

that Contractor in good faith believes to be unlawful as permitted by 45 C.F.R. 164.502(j)(1). Notwithstanding the foregoing, Contractor shall not be required to provide prior written notice to DCH's Office of Inspector General if Contractor is provided written instruction otherwise by the health oversight agency authorized by law to investigate DCH.

- D.** Use and disclose PHI to consult with an attorney for purposes of determining Contractor's legal options with regard to reporting conduct by DCH that Contractor in good faith believes to be unlawful, as permitted by 45 C.F.R. 164.502(j)(1).
- 2.** Contractor warrants that only individuals designated by title or position description on Attachment E-1 or by name on Attachment E-2 will request PHI from DCH or access DCH PHI in order to perform the services of the Contract, and these individuals will only request the minimum necessary amount of information necessary in order to perform the services.
- 3.** Contractor warrants that the individuals listed by title or position description on Attachment E-1 require access to PHI in order to perform services under the Contract. Contractor agrees to send updates to Attachment E-1 whenever necessary. Uses or disclosures of PHI by individuals not described on Attachment E-1 are impermissible.
- 4.** Contractor warrants that the individuals listed by name on Attachment E-2 require access to a DCH information system (an information system for which DCH creates and terminates user accounts), in order to perform services under the Contract. Contractor agrees to notify the Project Leader and the Access Control Coordinator named on Attachment E-2 immediately, but at least within 24 hours, of any change in the need for DCH information system access by any individual listed on Attachment E-2. Any failure to report a change within the 24 hour time period will be considered a security incident and may be reported to Contractor's Privacy and Security Officer, Information Security Officer and the Georgia Technology Authority for proper handling and sanctions.
- 5.** Contractor agrees that it is a Business Associate to DCH as a result of the Contract, and warrants to DCH that it complies with the Privacy Rule and Security Rule requirements that apply to Business Associates and will continue to comply with these requirements. Contractor further warrants to DCH that it maintains and follows written policies and procedures to achieve and maintain compliance with the HIPAA Privacy and Security Rules and updates such policies and procedures as necessary in order to comply with the HIPAA Privacy and Security Rules that apply to Business Associates. These policies and procedures shall be provided to DCH upon request.
- 6.** The Parties agree that a copy of all communications related to compliance with this Agreement will be forwarded to the following Privacy and Security Contacts:

 - A.** At DCH: Alison Cline Earles
HIPAA Privacy and Security Officer, Office of General Counsel
hipaa@dch.ga.gov
aearles@dch.ga.gov

404-656-0412

Sherman Harris
Agency Information Security Officer
sheharris@dch.ga.gov
404-656-9653

B. At Contractor: _____

7. Contractor agrees that it will:

- A. Not request, create, receive, use or disclose PHI other than as permitted or required by this Agreement, the Contract, or as required by law.
- B. Establish, maintain and use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or the Contract.
- C. Implement and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of DCH.
- D. In addition to the safeguards described above, Contractor shall include access controls that restrict access to PHI to the individuals described or identified on E-1 and E-2, as amended from time to time, shall implement encryption of all electronic PHI during transmission and shall encrypt all electronic PHI during storage on portable media devices (such as backup storage tapes).
- E. Upon DCH's reasonable request, but no more frequently than annually, provide the results of privacy and security assessments to DCH, and ensure that corrective actions identified during the assessments are implemented.
- F. Mitigate, to the extent practicable, any harmful effect that may be known to Contractor from a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement, the Contract or applicable regulations. Contractor shall bear the costs of mitigation, which shall include the reasonable costs of credit monitoring or credit restoration when the use or disclosure results in exposure of information commonly used in identity theft.
- G. Ensure that its agents or subcontractors to whom it provides PHI are contractually obligated to comply with at least the same obligations that apply to Contractor under

this Agreement, and ensure that its agents or subcontractors comply with the conditions, restrictions, prohibitions and other limitations regarding the request for, creation, receipt, use or disclosure of PHI, that are applicable to Contractor under this Agreement and the Contract.

- H.** Except for “Non-Reportable Incidents,” report to DCH any use or disclosure of PHI that is not provided for by this Agreement or the Contract of which it becomes aware. Non-Reportable Incidents are limited to the following:
1. the unintentional acquisition, access, or use of PHI by a workforce member of Contractor acting under the authority of Contractor, so long as the PHI is not further acquired, accessed, used or disclosed in an impermissible manner;
 2. the inadvertent disclosure of PHI from a person designated in E-1 or E-2 as authorized to access DCH PHI to a workforce member of Contractor who is not designated in E-1 or E-2, but is authorized to access other Protected Health Information maintained by Contractor, so long as the information is not further acquired, accessed, used or disclosed in an impermissible manner.
- I.** Make an initial report to the DCH in writing in such form as DCH may require within three (3) business days after Contractor (or any subcontractor) becomes aware of the unauthorized use or disclosure. This report will require Contractor to identify the following:
- i. The nature of the impermissible use or disclosure (the “incident”), which will include a brief description of what happened, including the date it occurred and the date Contractor discovered the incident;
 - ii. The Protected Health Information involved in the impermissible use or disclosure, such as whether the full name, social security number, date of birth, home address, account number or other information were involved);
 - iii. Who (by title, access permission level and employer) made the impermissible use or disclosure and who received the Protected Health Information as a result;
 - iv. What corrective or investigational action Contractor took or will take to prevent further impermissible uses or disclosures, to mitigate harmful effects, and to prevent against any further incidents;
 - v. What steps individuals who may have been harmed by the incident might take to protect themselves; and
 - vi. Whether Contractor believes that the impermissible use or disclosure constitutes a Breach of Unsecured Protected Health Information.

Upon request by the DCH HIPAA Privacy and Security Officer or the DCH Information Security Officer, Contractor agrees to make a complete report to the DCH in writing within two weeks of the initial report that includes a root cause analysis and a proposed corrective action plan. Upon approval of a corrective action plan by the DCH, Contractor agrees to implement the corrective action plan and provide proof of implementation to the DCH within five (5) business days of DCH's request for proof of implementation.

- J.** Report to the DCH HIPAA Privacy and Security Officer and the DCH Agency Information Security Officer any successful unauthorized access, modification, or destruction of PHI or interference with system operations in Contractor's information systems as soon as practicable but in no event later than three (3) business days of discovery. If such a security incident resulted in a use or disclosure of PHI not permitted by this Agreement, Contractor shall also make a report of the impermissible use or disclosure as described above. Contractor agrees to make a complete report to the DCH in writing within two weeks of the initial report that includes a root cause analysis and, if appropriate, a proposed corrective action plan designed to protect PHI from similar security incidents in the future. Upon DCH's approval of Contractor's corrective action plan, Contractor agrees to implement the corrective action plan and provide proof of implementation to the DCH.
- K.** Upon DCH's reasonable request and not more frequently than once per quarter, report to the DCH Agency Information Security Officer any (A) attempted (but unsuccessful) unauthorized access, use, disclosure, modification, or destruction of PHI or (B) attempted (but unsuccessful) interference with system operations in Contractor's information systems. Contractor does not need to report trivial incidents that occur on a daily basis, such as scans, "pings," or other routine attempts that do not penetrate computer networks or servers or result in interference with system operations.
- L.** Cooperate with DCH and provide assistance necessary for DCH to determine whether a Breach of Unsecured Protected Health Information has occurred, and whether notification of the Breach is legally required or otherwise appropriate. Contractor agrees to assist DCH in its efforts to comply with the HIPAA Privacy and Security Rules, as amended from time to time. To that end, the Contractor will abide by any requirements mandated by the HIPAA Privacy and Security Rules or any other applicable laws in the course of this Contract. Contractor warrants that it will cooperate with DCH, including cooperation with DCH privacy officials and other compliance officers required by the HIPAA Privacy and Security Rules and all implementing regulations, in the course of performance of this Contract so that both parties will be in compliance with HIPAA.
- M.** If DCH determines that a Breach of Unsecured Protected Health Information has occurred as a result of Contractor's impermissible use or disclosure of PHI or failure to comply with obligations set forth in this Agreement or in the Privacy or Security Rules, provide all notifications to Individuals, HHS and/or the media, on behalf of

DCH, after the notifications are approved by the DCH. Contractor shall provide these notifications in accordance with the security breach notification requirements set forth in 42 U.S.C. §17932 and 45 C.F.R. Parts 160 & 164 subparts A, D & E as of their respective Compliance Dates, and shall pay for the reasonable and actual costs associated with such notifications.

In the event that DCH determines a Breach has occurred, without unreasonable delay, and in any event no later than thirty (30) calendar days after Discovery, Contractor shall provide the DCH HIPAA Privacy and Security Officer a list of Individuals and a copy of the template notification letter to be sent to Individuals. Contractor shall begin the notification process only after obtaining DCH's approval of the notification letter.

- N. Make any amendment(s) to PHI in a Designated Record Set that DCH directs or agrees to pursuant to 45 CFR 164.526 within five (5) business days after request of DCH. Contractor also agrees to provide DCH with written confirmation of the amendment in such format and within such time as DCH may require.
- O. In order to meet the requirements under 45 CFR 164.524, regarding an individual's right of access, Contractor shall, within five (5) business days following DCH's request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the DCH, provide DCH access to the PHI in an individual's Designated Record Set. However, if requested by DCH, Contractor shall provide access to the PHI in a Designated Record Set directly to the individual to whom such information relates.
- P. Give the Secretary of the U.S. Department of Health and Human Services (the "Secretary") or the Secretary's designees access to Contractor's books and records and policies, practices or procedures relating to the use and disclosure of PHI for or on behalf of DCH within five (5) business days after the Secretary or the Secretary's designees request such access or otherwise as the Secretary or the Secretary's designees may require. Contractor also agrees to make such information available for review, inspection and copying by the Secretary or the Secretary's designees during normal business hours at the location or locations where such information is maintained or to otherwise provide such information to the Secretary or the Secretary's designees in such form, format or manner as the Secretary or the Secretary's designees may require.
- Q. Document all disclosures of PHI and information related to such disclosures as would be required for DCH to respond to a request by an Individual or by the Secretary for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. By no later than five (5) business days of receipt of a written request from DCH, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the DCH HIPAA Privacy and Security Officer, Contractor shall provide an accounting of disclosures of PHI regarding an Individual to DCH. If requested by DCH, Contractor shall provide an accounting of disclosures directly to

the individual. Contractor shall maintain a record of any accounting made directly to an individual at the individual's request and shall provide such record to the DCH upon request.

- R. In addition to any indemnification provisions in the Contract, indemnify the DCH from any liability resulting from any violation of the HIPAA Privacy and Security Rules or Breach that arises from the conduct or omission of Contractor or its employee(s), agent(s) or subcontractor(s). Such liability will include, but not be limited to, all actual and direct costs and/or losses, civil penalties and reasonable attorneys' fees imposed on DCH.
- S. For any requirements in this Agreement that include deadlines, pay performance guarantee payments of \$300.00 per calendar day, starting with the day after the deadline and continuing until Contractor complies with the requirement. Contractor shall ensure that its agreements with subcontractors enable Contractor to meet these deadlines.

8. DCH agrees that it will:

- A. Notify Contractor of any new limitation in DCH's Notice of Privacy Practices in accordance with the provisions of the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such limitation will affect Contractor's use or disclosure of PHI.
- B. Notify Contractor of any change in, or revocation of, authorization by an Individual for DCH to use or disclose PHI to the extent that DCH determines in the exercise of its sole discretion that such change or revocation will affect Contractor's use or disclosure of PHI.
- C. Notify Contractor of any restriction regarding its use or disclosure of PHI that DCH has agreed to in accordance with the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such restriction will affect Contractor's use or disclosure of PHI.
- D. Prior to agreeing to any changes in or revocation of permission by an Individual, or any restriction, to use or disclose PHI, DCH agrees to contact Contractor to determine feasibility of compliance. DCH agrees to assume all costs incurred by Contractor in compliance with such special requests.

- 9. The **Term of this Agreement** shall be effective on the Effective Date and shall terminate when all of the PHI provided by DCH to Contractor, or created or received by Contractor on behalf of DCH, is destroyed or returned to DCH, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.

A. Termination for Cause. Upon DCH's knowledge of a material breach of this Agreement by Contractor, DCH shall either:

- i. Provide an opportunity for Contractor to cure the breach of Agreement within a reasonable period of time, which shall be within thirty (30) calendar days after receiving written notification of the breach by DCH;
- ii. If Contractor fails to cure the breach of Agreement, terminate the Contract upon thirty (30) calendar days notice; or
- iii. If neither termination nor cure is feasible, DCH shall report the breach of Agreement to the Secretary of the Department of Health and Human Services.

B. Effect of Termination.

- i. Upon termination of this Agreement, for any reason, DCH and Contractor shall determine whether return of PHI is feasible. If return of the PHI is not feasible, Contractor agrees to continue to extend the protections of this Agreement to the PHI for so long as the Contractor maintains the PHI and shall limit the use and disclosure of the PHI to those purposes that made return or destruction of the PHI infeasible. If at any time it becomes feasible to return or destroy any such PHI maintained pursuant to this paragraph, Contractor must notify DCH and obtain instructions from DCH for either the return or destruction of the PHI.
- ii. Contractor agrees that it will limit its further use or disclosure of PHI only to those purposes DCH may, in the exercise of its sole discretion, deem to be in the public interest or necessary for the protection of such PHI, and will take such additional actions as DCH may require for the protection of patient privacy and the safeguarding, security and protection of such PHI.
- iii. This Effect of Termination section survives the termination of the Agreement.

10. Interpretation. Any ambiguity in this Agreement shall be resolved to permit DCH to comply with applicable laws, rules and regulations, the HIPAA Privacy Rule, the HIPAA Security Rule and any rules, regulations, requirements, rulings, interpretations, procedures or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable laws, rules and regulations and the laws of the State of Georgia shall supersede the Privacy Rule if, and to the extent that, they impose additional requirements, have requirements that are more stringent than or have been interpreted to provide greater protection of patient privacy or the security or safeguarding of PHI than those of the HIPAA Privacy Rule.

11. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the

respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.

- 12. All other terms and conditions contained in the Contract and any amendment thereto, not amended by this Agreement, shall remain in full force and effect.**

(Signatures on following page)

IN WITNESS WHEREOF, Contractor, through its authorized officer and agent, has caused this Agreement to be executed on its behalf as of the date indicated.

CONTRACTOR

BY: _____
SIGNATURE DATE

TITLE*

* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

ATTACHMENT E-1

List of Individuals Permitted to Receive, Use and Disclose DCH PHI

The following position titles, or position descriptions, as employees and/or representatives of Contractor, need access to DCH Protected Health Information in order for Contractor to perform the services described in the Contract:

- _____
- _____
- _____
- _____
- _____

Transfers of PHI must comply with DCH Policy and Procedure 419: Appropriate Use of Information Technology Resources.

Approved methods of secure delivery of PHI between Contractor and DCH:

- Secure FTP file transfer (preferred)
- Encrypted email or email sent through “secure tunnel” approved by DCH Information Security Officer
- Email of encrypted document (password must be sent by telephone only)
- Encrypted portable media device and tracked delivery method

Contractor must update this list as needed and provide the updated form to DCH. Use of DCH Protected Health Information by individuals who are not described on this Attachment E-1, as amended from time to time, is impermissible and a violation of the Agreement. Contractor must update this Attachment E-1 as needed and provide the updated form to DCH.

DCH Project Leader Contact Information: **[INSERT HERE]**

ATTACHMENT E-2

Part 1:

Please initial beside the correct option. Please select only one option.

_____ Contractor DOES NOT need any user accounts to access DCH Information Systems. Do not complete Part 2 of this form.

_____ Contractor DOES need user accounts to access DCH Information Systems. Please complete Part 2 of this form.

Part 2:

Please complete the table below if you indicated that Contractor DOES need any user accounts to access DCH Information Systems. Please attach additional pages if needed.

List of Individuals Authorized to Access a DCH Information System Containing PHI

The following individuals, as employees and/or representatives of Contractor, need access to DCH Information Systems containing DCH Protected Health Information in order for Contractor to perform the services described in the Contract:

Full Name	Employer	DCH Information System	Type of Access (Read only? Write?)

The DCH Project Leader must submit a completed DCH Network Access Request Form for each individual listed above. Access will be granted and changed in accordance with DCH Policy and Procedure 435: Managing Authorization, Access and Control of Information Systems.

Contractor must notify the Project Leader identified in the Contract and the DCH Access Control Coordinator (clewis@dch.ga.gov and helpdesk@dch.ga.gov) immediately, but at least within 24 hours, after any individual on this list no longer needs the level of access described. Failure to provide this notification on time is a violation of the Agreement and will be reported as a security incident.

Contractor must update this Attachment E-2 as needed and provide the updated form to DCH.
DCH Project Leader Contact Information: **[INSERT HERE]**

VENDOR LOBBYIST DISCLOSURE AND REGISTRATION CERTIFICATION FORM



Pursuant to Executive Order Number 10.01.03.01 (the “Order”), which was signed by Governor Sonny Perdue on October 1, 2003, Contractors with the state are required to complete this form. The Order requires “Vendor Lobbyists,” defined as those who lobby state officials on behalf of businesses that seek a contract to sell goods or services to the state or those who oppose such a contract, to certify that they have registered with the State Ethics Commission and filed the disclosures required by Article 4 of Chapter 5 of Title 21 of the Official Code of Georgia Annotated. Consequently, every vendor desiring to enter into a contract with the state must complete this certification form. False, incomplete, or untimely registration, disclosure, or certification shall be grounds for termination of the award and contract and may cause recoupment or refund actions against Contractor.

In order to be in compliance with Executive Order Number 10.01.03.01, please complete this Certification Form by designating only one of the following:

- ☐ Contractor does not have any lobbyist employed, retained, or affiliated with the Contractor who is seeking or opposing contracts for it or its clients. Consequently, Contractor has not registered anyone with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.
- ☐ Contractor does have lobbyist(s) employed, retained, or affiliated with the Contractor who are seeking or opposing contracts for it or its clients. The lobbyists are:

Contractor states, represents, warrants, and certifies that it has registered the above named lobbyists with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.

CONTRACTOR

Date

Signature

Title of Signatory

STATEMENT OF ETHICS

Preamble

The Department of Community Health has embraced a mission to improve the health of all Georgians through health benefits, systems development, and education. In accomplishing this mission, DCH employees must work diligently and conscientiously to support the goals of improving health care delivery and health outcomes of the people we serve, empowering health care consumers to make the best decisions about their health and health care coverage, and ensuring the stability and continued availability of health care programs for the future. Ultimately, the mission and goals of the organization hinge on each employee's commitment to strong business and personal ethics. This Statement of Ethics requires that each employee:

- Promote fairness, equality, and impartiality in providing services to clients
- Safeguard and protect the privacy and confidentiality of clients' health information, in keeping with the public trust and mandates of law
- Treat clients and co-workers with respect, compassion, and dignity
- Demonstrate diligence, competence, and integrity in the performance of assigned duties
- Commit to the fulfillment of the organizational mission, goals, and objectives
- Be responsible for employee conduct and report ethics violations to the DCH Inspector General and to the DCH Ethics Officer
- Engage in carrying out DCH's mission in a professional manner
- Foster an environment that motivates DCH employees and vendors to comply with the Statement of Ethics
- Comply with the Code of Ethics set forth in O.C.G.A. Section 45-10-1 et seq.

Not only should DCH employees comply with this Statement of Ethics, but DCH expects that each vendor, contractor, and subcontractor will abide by the same requirements and guidelines delineated. Moreover, it is important that employees and members of any advisory committee or commission of DCH acknowledge the Statement of Ethics.

Ethical Guidelines

1. Code of Conduct

All employees of DCH are expected to maintain and exercise at all times the highest moral and ethical standards in carrying out their responsibilities and functions. Employees must conduct themselves in a manner that prevents all forms of impropriety, including placement of self-interest above public interest, partiality, prejudice, threats, favoritism and undue influence. There will be no reprisal or retaliation against any employee for questioning or reporting possible ethical issues.

2. Equal Employment

The Department is committed to maintaining a diverse workforce and embraces a personnel management program which affords equal opportunities for employment and advancement based on objective criteria. DCH will provide recruitment, hiring, training, promotion, and other conditions of employment without regard to race, color, age, sex, religion, disability, nationality, origin, pregnancy, or other protected bases. The Department expects employees to support its commitment to equal employment. The failure of any employee to comply with the equal employment requirements provided in DCH Policy #21 may result in disciplinary action, up to and including termination.

3. Harassment

DCH will foster a work environment free of harassment and will not tolerate harassment based on sex (with or without sexual conduct), race, color, religion, national origin, age, disability, protected activity (*i.e.*, opposition to prohibited discrimination or participation in a complaint process) or other protected bases from *anyone* in the workplace: supervisors, co-workers, or vendors. The Department strongly urges employees to report to the Human Resources Section any incident in which he or she is subject to harassment. Additionally, any employee who witnesses another employee being subjected to harassment should report the incident to the Human Resources Section. If DCH determines that an employee has engaged in harassment, the employee shall be subject to disciplinary action, up to and including termination, depending on the severity of the offense.

4. Appropriate Use of DCH Property

Employees should only use DCH property and facilities for DCH business and not for any type of personal gain. The use of DCH property and facilities, other than that prescribed by departmental policy, is not allowed. Furthermore, the use of DCH property and facilities for any purpose which is unlawful under the laws of the United States, or any state thereof, is strictly prohibited. Employees who divert state property or resources for personal gain will be required to reimburse the Department and will be subject to the appropriate disciplinary action, up to and including, termination.

5. Secure Workplace

DCH is committed to maintaining a safe, healthy work environment for its employees. Accordingly, it is DCH's expectation that employees refrain from being under the influence of alcohol or drugs in the workplace because such conduct poses a threat to the employee, as well

as others present in the workplace. Additionally, DCH has a zero tolerance policy regarding violence in the workplace. Specifically, DCH will not condone the threat of, or actual assault or attack upon, a client, vendor, or other employee. If an employee engages in violent behavior which results in an assault of another person, he or she will be immediately terminated.

6. Political Activities

Although the DCH recognizes that employees may have an interest in participating in political activities and desires to preserve employees' rights in participating in the political process, employees must be aware of certain allowances and prohibitions associated with particular political activities. DCH encourages employees to familiarize themselves with DCH Policy #416 to gain understanding about those instances when a political activity is disallowed and/or approval of such activity is warranted.

7. Confidentiality

DCH has a dual mandate in terms of confidentiality and privacy. Foremost, as a state agency, DCH must comply with the Georgia Open Records Act and Open Meetings Act. The general rule that is captured by those laws is that all business of the agency is open to the public view upon request. The exceptions to the general rule are found in various federal and state laws. In order to protect the individuals' health information that is vital to the delivery of and payment for health care services, DCH sets high standards of staff conduct related to confidentiality and privacy. Those standards are reinforced through continuous workforce training, vendor contract provisions, policies and procedures, and web-based resources.

8. Conflicts of Interest

Employees should always strive to avoid situations which constitute a conflict of interest or lend to the perception that a conflict of interest exists. Specifically, employees must avoid engaging in any business with the DCH which results in personal financial gain. Similarly, employees must encourage family members to avoid similar transactions since they are subject to the same restrictions as employees. DCH encourages its employees to seek guidance from the Office of General Counsel regarding questions on conflicts of interest.

9. Gifts

Employees are strictly prohibited from individually accepting gifts from any person with whom the employee interacts on official state business. Gifts include, but are not limited to, money, services, loans, travel, meals, charitable donations, refreshments, hospitality, promises, discounts or forbearance that are not generally available to members of the public. Any such item received must be returned to the sender with an explanation of DCH's Ethics Policy.

10. Relationships with Vendors and Lobbyists

DCH values vendors who possess high business ethics and a strong commitment to quality and value. Business success can only be achieved when those involved behave honestly and responsibly. Therefore, it is critical that employees ensure

that vendors contracting with DCH are fully informed of DCH policies concerning their relationships with DCH employees and that these policies be uniformly applied to all vendors. Among other requirements, DCH expects that each vendor will honor the terms and conditions of its contracts and agreements. If DCH determines that a vendor has violated the terms and conditions of a contract or agreement, the vendor shall be held responsible for its actions.

Employees must ensure that fair and open competition exists in all procurement activities and contracting relationships in order to avoid the appearance of and prevent the opportunity for favoritism. DCH strives to inspire public confidence that contracts are awarded equitably and economically. DCH will apply the state procurement rules, guidelines, and policies. Open and competitive bidding and contracting will be the rule.

DCH recognizes that lobbyists, both regulatory and legislative, may from time to time seek to meet with DCH employees to advance a particular interest. DCH recognizes that employees may have personal opinions, even those that may be contrary to a position that DCH has adopted. DCH employees, however, must recognize that the public, including legislators and lobbyists, may have difficulty differentiating between the official DCH position and a personal opinion. Accordingly, employees should always work directly with the Director of Legislative Affairs in preparing any responses to requests or questions from elected officials and their staff or lobbyists.

11. Mandatory Reporting

If I have knowledge of any ethics violation, I am aware that I am responsible for reporting such violation to the DCH Inspector General and the DCH Ethics Officer. My good faith reports will be free from retaliation. If I am a supervisor, I am aware that I am responsible for reporting such violation and for forwarding any such report from a member of my staff to the DCH Inspector General and the DCH Ethics Officer. As a supervisor, I am additionally responsible for ensuring that the employees who report to me are aware of and comply with the ethical standards and policies that are applicable to their positions.

ACKNOWLEDGEMENT

I, the undersigned, hereby acknowledge that:

- A. I have received, read, and understand the Georgia Department of Community Health
Statement of Ethics;
- B. I agree to comply with each provision of the Georgia Department of Community Health
Statement of Ethics;
- C. I am a:
- ☐ Member of the Board of the Department of Community Health
 - ☐ Member/employee of advisory committee or commission
 - ☐ Department Employee
 - ☒ Vendor/Contractor/Subcontractor

CONTRACTOR

Authorized Signature*

Date

Print Name

* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

ETHICS IN PROCUREMENT POLICY**Georgia Department of Community Health**

DCH Ethics In Procurement Policy	Policy No. 402
Effective Date: April 10 , 2006 Revision Date: March 25, 2008	Page 1 of 8

I. THE COMMITMENT

The Department is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards, is fully compliant with all instruments of governance and has the complete confidence and trust of the public it serves. To achieve these important public purposes, it is critical that potential and current vendors, as well as employees, have a clear understanding of and an appreciation for, the DCH Ethics in Procurement Policy (the “Policy”).

II. SCOPE

This Policy is applicable to all Vendors and Employees, as those terms are defined below.

III. CONSIDERATIONS

Procurement ethics must include, but is not limited to, the following considerations:

A. Legitimate Business Needs

The procurement of goods and services will be limited to those necessary to accomplish the mission, goals, and objectives of the Department.

B. Conflicts of Interest

A “conflict of interest” exists when personal interest interferes in any way with the interests of the Department. A conflict situation can arise when an individual takes actions or has interests that may make it difficult to perform his or her work objectively and effectively. Conflicts of interest also arise when an individual, or a member of his or her Family Member, receives improper personal benefits as a result of his or her action, decision, or disclosure of Confidential Information in a Procurement.

C. Appearance of Impropriety

Employees must take care to avoid any appearance of impropriety and must disclose to their supervisors any material transaction or relationship that reasonably could be expected to give rise to a conflict of interest. Similarly, anyone engaged in a business relationship with the Department should avoid any appearances of impropriety.

D. Influence

An impartial, arms' length relationship will be maintained with anyone seeking to influence the outcome of a Procurement.

E. Gifts

DCH Employees are prohibited from soliciting, demanding, accepting, or agreeing to accept Gifts from a Vendor.

F. Misrepresentations

Employees and Vendors may not knowingly falsify, conceal or misrepresent material facts concerning a Procurement.

G. Insufficient Authorization

Employees may not obligate the Department without having received prior authorization from an approved official. Engaging in such activity is a misrepresentation of authority.

An Employee's failure to adhere to these considerations, as well as the guidelines set forth herein shall be grounds for disciplinary action, up to and including, termination. Similarly, a Vendor's failure to comply with this Policy will result in appropriate action as determined by governing state and/or federal law, rules and regulations, and other applicable Department policies and procedures.

IV. DEFINITIONS

For purposes of this policy:

"Affiliate Vendor Team" shall mean employees, directors, officers, contractors, and consultants of a Vendor that directly or indirectly assist the Vendor in the preparation of response to a Procurement.

"Confidential Information" shall mean all information not subject to disclosure pursuant to the Open Records Act, O.C.G.A. §50-18-70 et seq. that a current Vendor or potential Vendor might utilize for the purpose of responding to Procurement or that which is

deemed disadvantageous or harmful to the Department and to the citizens of the State of Georgia in that such disclosure might lead to an unfair advantage of one Vendor over another in a Procurement.

“Contracting Officer” shall mean the Department Employee maintaining oversight of the Procurement process that may also be designated as the Point of Contact as described below.

“Department” shall mean the Georgia Department of Community Health.

“Employee” shall mean any person who is employed by the Department.

“Evaluation Team” shall mean a designated group of Department Employees who review, assess, and score documents submitted to the Department in response to a Procurement solicitation.

“Family Member” means a spouse, parent, grandparent, child, brother, sister, uncle, aunt, nephew, niece, first cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister.

“Financial Interest” shall mean, for purposes of this Policy, an ownership interest in assets or stocks equaling 0%.

“Gifts” shall mean, for purposes of this Policy, money, advances, personal services, gratuities, loans, extensions of credit, forgiveness of debts, memberships, subscriptions, travel, meals, charitable donations, refreshments, hospitality, promises, discounts or forbearance that are not generally available to members of the public. A Gift need not be intended to influence or reward an Employee.

“Kickback” shall mean compensation of any kind directly or indirectly accepted by an Employee from a Vendor competing for or doing business with the Department, for the purpose of influencing the award of a contract or the manner in which the Department conducts its business. Kickbacks include, but are not limited to, money, fees, commissions or credits.

“Procurement” shall mean buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. The term also includes all activities that pertain to obtaining any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, as well as the disposition of any Protest.

“Protest” shall mean a written objection by an interested party to an RFQ or RFP solicitation, or to a proposed award or award of a contract, with the intention of receiving a remedial result.

“Protestor” shall mean an actual bidder/offeror who is aggrieved in connection with a contract award and who files a Protest.

“Point of Contact” shall mean the individual designated to be a Vendor’s only contact with the DCH following the public advertisement of a solicitation or the issuance of a request for a bid, proposal, or quote, until the award of a resulting contract and resolution of a Protest, if applicable.

“Prohibited Contact” shall mean contact with any officer, member of the Board or other Employee of the DCH, other than the Point of Contact, whereby it could be reasonably inferred that such contact was intended to influence, or could reasonably be expected to influence, the outcome of a Procurement. This prohibition includes, without limitation, personal meetings, meals, entertainment functions, telephonic communications, letters, faxes and e-mails, as well as any other activity that exposes the Employee to direct contact with a Vendor. This prohibition does not include contacts with Employees solely for the purpose of discussing existing on-going Department work which is unrelated to the subject of the Procurement. Inquiries regarding the status of a Procurement should also be directed to the Point of Contact.

“Vendor” shall mean any individual or entity seeking to or doing business with the Department within the scope of this Policy, including, without limitation, contractors, consultants, suppliers, manufacturers seeking to act as the primary contracting party, officers and Employees of the foregoing, any subcontractors, sub consultants and sub suppliers at all lower tiers, as well as any person or entity engaged by the Department to provide a good or service.

“DOAS Vendor Manual” shall mean the Georgia of Department of Administrative Services’ vendor manual.

V. EMPLOYEE RESPONSIBILITIES

A. Evaluation Team Members

1. The Contracting Officer must ensure that employees participating in any Procurement activities have sufficient understanding of the Procurement and evaluation process and the applicable DCH and DOAS rules and regulations and policies associated with the processes.
2. Evaluation team members are tasked with conducting objective, impartial evaluations, and therefore, must place aside any personal and/or professional biases or prejudices that may exist. Additionally, Employees serving on an Evaluation Team must not allow personal relationships (i.e. friendships, dating) with Employees, principals, directors, officers, etc. of a Vendor or individuals on the Affiliate Vendor Team to interfere with the ability to render objective and fair determinations. Such interference may constitute the appearance of, and/or an actual conflict of interest and should be immediately disclosed to the

Contracting Officer prior to the Employee's participation on the evaluation team. The Contracting Officer shall consult with the Ethics Officer to make a determination as to whether the Employee should participate on the evaluation team.

3. In the event that the Department determines that a conflict of interest does exist and the Employee failed to make the appropriate disclosure, the Department will disqualify the Employee from further participation on the evaluation team. Furthermore, in the event that the Department determines that the conflict of interest did impact the outcome of a Procurement; such Employee may be subject to disciplinary action, up to and including termination.
4. In the event that the Department identifies that the employee maintains a relationship of any sort that lends to an appearance of a conflict of interest with respect to a Procurement, the Department may, in its discretion, take appropriate action to eliminate such an appearance, up to and including the disallowance of the Employee's participation in any Procurement activities. In such instances, the employee most likely will not be subject to disciplinary action.
5. Prior to participating on an evaluation team, each DCH Employee must execute a statement attesting and acknowledging that:
 - a. The Employee shall not participate in a decision or investigation, or render an approval, disapproval, or recommendation with respect to any aspect of a Procurement, knowing that the Employee, or member of their Family Member has an actual or potential Financial Interest in the Procurement, including prospective employment;
 - b. The Employee shall not solicit or accept Gifts, regardless of whether the intent is to influence purchasing decisions;
 - c. Neither the Employee nor a Family Member of an Employee shall be employed by, or agree to work for, a Vendor or potential Vendor or Affiliate Vendor Team during any phase of a Procurement;
 - d. The Employee shall not knowingly disclose Confidential Information;
 - e. The Employee is precluded from engaging in Prohibited Contact upon the release of a Procurement solicitation, during the Evaluation Process, and throughout a Protest period, period of stay or court injunction related to procurement with which Employee was associated or at any time prior to the final adjudication of the Protest;
 - f. The Employee is responsible for reporting any violations of this Policy in accordance with this Policy;

- g. The Employee will be responsible for complying with all DOAS rules and regulations, as well as Georgia law pertaining to procurements and conflicts of interest; and
- h. The Employee shall not assist a potential Vendor in the Procurement process in evaluating the solicitation, preparing a bid in response to the evaluation, or negotiating a contract with the Department. This prohibition shall not prohibit the Contracting Officer from carrying out his or her prescribed duties as allowed by DCH policy and procedures or the DOAS Vendor Manual.

B. Responsibilities of Non-Evaluation Team Members

All Employees should be mindful of the importance of confidentiality during any Procurement. Even if an Employee is not serving in the capacity of a member on the Evaluation Team, the Employee must refrain from engaging in conduct with a Vendor that could result in a conflict of interest or be considered a Prohibited Contact.

VI. VENDOR RESPONSIBILITIES

A. Gifts and Kick-Backs

Vendors may neither offer nor give any Gift or Kick-backs, directly or indirectly, to an Employee. Similarly, no Vendor may offer or give any Gift or Kick-backs, directly or indirectly, to any member of an Employee's Family Member. Such prohibited activity may result in the termination of the contract, in those cases where the Vendor has executed a contract with the Department. In the event that a potential Vendor who has submitted a response to a Procurement solicitation engages in such activity, the Department shall act in accordance with DOAS protocol.

B. Family Relationships with Department Employees

If a Vendor has a family or personal relationship with the Employee, a Gift that is unconnected with the Employee's duties at the DCH is not necessarily prohibited. In determining whether the giving of an item was motivated by personal rather than business concerns, the history of the relationship between the Vendor and Employee shall be considered. However, regardless of the family or personal relationship between a Vendor and an Employee, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the Employee in the performance of his or her official duties.

C. Vendor Submittals

The Department expects all potential Vendors and current Vendors to be forthcoming, always submitting true and accurate information in response to a Procurement or with regard to an existing business relationship. If the Department determines that the Vendor has intentionally omitted or failed to provide pertinent information and/or falsified or misrepresented material information submitted to the Department, the Department shall act in accordance with applicable state law and DOAS procurement policies and procedures.

Vendors must calculate the price(s) contained in any bid in accordance with Section 5.11 of the DOAS Vendor Manual.

D. Business Relations

A Vendor may not be allowed to conduct business with the Department for the following reasons:

1. Falsifying or misrepresenting any material information to the Department as set forth hereinabove;
2. Conferring or offering to confer upon an Employee participating in a Procurement (which the entity has bid or intends to submit a bid) any Gift, gratuity, favor, or advantage, present or future; and
3. Any other reasons not explicitly set forth herein that are contained in the DOAS Vendor Manual.

VII. USE OF CONFIDENTIAL INFORMATION

Employees will not use Confidential Information for their own advantage or profit, nor will they disclose Confidential Information during a Procurement to any potential Vendor or to any other unauthorized recipient outside DCH.

VIII. ADDRESSING VIOLATIONS

A. The Process

Adherence to this policy makes all DCH staff responsible for bringing violations to the attention of the Contracting Officer under Procurement protocols or to a supervisor/manager if the affected Employee is not a part of the Procurement. If for any reason it is not appropriate to report a violation to the Contracting Officer or the Employee's immediate supervisor, Employees will report such violations or concerns to the DCH Inspector General and the DCH Ethics Officer. The Contracting Officer and managers are required to report suspected ethics violations to the Inspector General, who has specific responsibility to investigate all reported violations.

Reporting suspected policy violations by others shall not jeopardize an Employee's tenure with the Department. Confirmed violations will result in appropriate

disciplinary action, up to and including termination from employment. In some circumstances, criminal and civil penalties may be applicable.

The Inspector General will notify the employee making the report of the suspected violation of receipt of such report within five (5) business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

B. Good Faith Filings

Anyone filing a complaint concerning a violation of this policy must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

C. Confidentiality

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation. Additionally, all Employees are expected to cooperate in the investigation of such violations. Failure to cooperate in an investigation may result in disciplinary action, up to and including termination from employment.

IX. MANDATORY REPORTING

Any and every employee who has knowledge of any ethics violation is responsible for reporting such violation to the DCH Inspector General and the Ethics Officer. Good faith reports will be free from retaliation. Supervisors are responsible for reporting such violation and for forwarding any such report from any member of the supervisor's staff to the DCH Inspector General and the Ethics Officer. Reports of violations made to the Ethics Officer will be forwarded to the DCH Inspector General. Supervisors are additionally responsible for ensuring that the employees under his or her supervision are aware of and comply with the DCH ethical standards and policies.

Employees and Board members are encouraged to contact the DCH Inspector General about any concerns regarding standards of conduct, ethics and conflicts of interest.

ACKNOWLEDGEMENT

I, the undersigned, hereby acknowledge that:

- A. I have received, read, and understand the Georgia Department of Community Health's ***Ethics In Procurement Policy***;
- B. I agree to comply with each provision of the Georgia Department of Community Health's ***Ethics In Procurement Policy***;
- C. I am a (please check which applies):
- ☒ Vendor/Contractor
☐ Subcontractor

CONTRACTOR

BY: _____
Signature

Date

Print/Type Name

*TITLE

* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract

Code of Ethics and Conflict of Interest Policy

Code of Ethics and Conflict of Interest Policy	Policy No. 401
Effective Date: November 1, 2006 Revision Date: January 26, 2011	Page 1 of 10

- References:**
1. O.C.G.A. §45-10-1 et seq.;
 2. O.C.G.A. § 21-5-1, et seq.;
 3. Governor’s Executive Order Establishing a Code of Ethics for Executive Branch Officers and Employees, January 10, 2011;
 4. DCH Ethics Statement
 5. DCH Ethics in Procurement Policy

I. Purpose

The purposes of this policy are to assist DCH Employees and Board members in maintaining the highest standards of ethics and to provide guidelines that DCH Employees and Board members should follow in order to avoid a conflict of interest or the appearance of conflict.

II. Definitions

For the purposes of this policy, the following terms shall have the following meanings:

- A. “Agency” shall mean any agency, authority, department, board, bureau, commission, corporation, committee, office, or instrumentality of the State of Georgia.
- B. “Board member” shall refer to all members of the Board of Community Health established under O.C.G.A. § 31-2-3.
- C. “Commissioner” shall mean the Commissioner of the Department of Community Health.
- D. “Department” shall refer to the Department of Community Health established under O.C.G.A. § 31-2-4.
- E. “Employee” shall mean any person who is employed by the Department.
- F. “Expenses” shall mean the provision of food, beverages, travel, lodging, and registration fees that are attendant to an Employee’s participation in a public

meeting related to official or professional duties. Expenses are limited to those items that are directly associated with the business or professional duties and are not attributable to personal, social or recreational activities.

- G. “Family Member” means a spouse, parent, grandparent, child, brother, sister, uncle, aunt, nephew, niece, first cousin, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister.
- H. “Gifts” shall mean, for the purposes of this Policy, money, advances, personal services, gratuities, loans, extensions of credit, forgiveness of debts, memberships, subscriptions, travel, meals, charitable donations, refreshments, hospitality, promises, discounts or forbearance that are not generally available to members of the public. A Gift need not be intended to influence or reward an Employee.
- I. “Honorarium” shall mean payment to a professional person for services for which no fee is required. Honorarium excludes such things as a certificate or other token of appreciation, which has nominal value and may be accepted as a ceremonial courtesy.
- J. “Indirectly” is intended to cover, but not be limited to, any scheme, device or plan which circumvents the literal language of this Policy but provides material financial benefits to a Board member or an Employee or such person’s Family Member. “Limited powers” shall mean those powers exercised by Public Officials, which affect and influence a specific agency. “Lobbyist” shall have the meaning set forth in O.C.G.A. Section 21-5-70(5).
- K. “Nepotism” shall mean demonstrating favor on the basis of Family Member relationship in employment decisions such as hiring, promotions, transfers, or terminations.
- L. “Part time” shall mean employed for less than thirty (30) hours per week for a continuous period of fewer than twenty-six (26) weeks.
- M. “Public Official” shall mean any person elected or appointed to a state office wherein the person has administrative and discretionary authority to receive and expend public funds and perform certain duties that impact the public.
- N. “State-wide powers” shall mean those powers exercised by Public Officials which affect and influence all of state government.
- O. “State” shall mean the State of Georgia.
- P. “Substantial interest” shall mean the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

- Q. “Transacting business” shall mean to sell or lease any personal or real property, surplus personal or real property, or services on one’s behalf or on behalf of any third party as an agent, broker, dealer, or representative.
- R. “Vendor” shall mean the definition set forth in O.C.G.A. Section 45-1-6(a)(5), as well as any person seeking or opposing a certificate of need.
- S. “Value” shall mean actual retail price or cost attributable to a gift minus taxes and/or gratuities or a reasonable estimate based upon customary charges for like goods or services.

III. Code of Ethics

In fulfilling designated duties and responsibilities, Employees and Board members should be mindful of the following principles:

- A. Uphold the Constitution, laws, and legal regulations of the United States and the State.
- B. Give a full day’s labor for a full day’s pay and perform duties with earnest effort and best thought.
- C. Never discriminate unfairly by extending special favors or privileges, whether for remuneration or not, and never accept, for personal gain or for a Family Member, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.
- D. Make no private promises of any kind binding upon the duties of office, since a government Employee has no private word, which can be binding on public duty.
- E. Refrain from engaging in business with the government, either direct or indirectly, which is inconsistent with the conscientious performance of governmental duties.
- F. Never use confidential information in the performance of governmental duties as a means of making a profit.
- G. Expose corruption.
- H. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- I. Uphold these principles, ever conscious that public office is a public trust.

IV. Transacting Business

A. DCH Board members and Employees

1. DCH Board members and Employees must refrain from transacting business with the Department for personal gain or on behalf of another party. However, it is allowable for DCH Board members and Employees to conduct business with other Agencies as long as the business transaction does not result in a benefit for the Department.
2. Part-time Employees, however, are allowed to transact business with the Department under the following circumstances:
 - a. the transaction resulted from a sealed competitive bid; or
 - b. the transaction does not exceed \$250.00 in benefit to the Employee, or transactions in a given calendar year do not, in the aggregate, exceed \$9,000.
3. A business in which DCH Board members or Employees maintain a substantial interest may not transact business with the Department.

B. Family Members

If a Family Member of a Public Official or Employee maintains a substantial interest in a business, that business may not engage in a business relationship with the Department. Because Family Members are subject to the same ethical constraints as Public Officials and/or Employees, Family Members may conduct business with other Agencies only as long as the business transaction does not result in a benefit for the Department. This prohibition stems from the presumption that the Public Official or Employee, by virtue of his or her Family Member's relationship, has benefited from the business transaction.

C. Exceptions

The following transactions are permitted:

1. A transaction by a full-time or part-time Public Official or part-time Employee that does not exceed \$250.00, or in the alternative, transactions, which in the aggregate in any given year, do not exceed \$9000 in value.
2. A transaction involving the sale of real property through eminent domain.
3. A transaction involving the purchase of health, life, disability, retirement or pension benefits as a part of compensation.
4. A transaction involving a Public Official or Employee and the sale of property or services, where State funds pay for the transaction, and the property or

service remains with a third party who is restricted from selling the property or services to an Agency.

5. A transaction between a DCH Board member or Employee and a public contractor.
6. Any transaction involving an emergency purchase by the Department which must be made to protect the health, safety, or welfare of the citizens or property of Georgia; provided, however, that such emergency shall be attested to in writing by the DCH Division Chief under whose scope of responsibility the purchase is made.
7. A transaction wherein a Public Official or DCH Board member is the only source of supply within the State; provided, however, that the limitation to such exclusive, sole source shall be attested to in writing by the DCH Division Chief under whose scope of responsibility the transaction is made.
8. A transaction occurring before March 1, 1983.
9. A transaction involving the provision of Medicaid or Medicare related services and benefits to an Employee or his Family Member; provided, however, in the case of an Employee, he or she shall have no decision-making authority or influence over the determination of eligibility for or amount of such services or benefits.
10. Any transaction between a DCH board member or Employee and an entity within the University System wherein the transaction has been approved by the unit of the University System.
11. Any transaction occurring prior to a Public Official's qualification to run for office or acceptance of an appointment to a public office if the transaction predates the qualifying or acceptance date.
12. Any transaction, wherein the course of business, a DCH Board member or Employee collects sales tax, license fees, excise taxes, or commission as compensation for the performance of a service or good.

D. Disciplinary Actions and Other Remedial Actions

In the event that a DCH Board member or Employee participates in impermissible transactions and/or fails to comply with the reporting requirements in Paragraph V, the following consequences may result:

1. Removal from the Board by the Governor;
2. Termination from employment;

3. Civil fines not to exceed \$10,000; and
4. Restitution to the State for any financial benefit received as a result of the business transaction.

Similarly, if any business in which the DCH Board member's or Employee's Family Member has a substantial interest participates in an impermissible transaction, the business may be subject to the following consequences:

1. Civil fines not to exceed \$10,000; and
2. Restitution to the State for any financial benefit received a result of the business transaction.

V. Other Conflicts of Interest

A. Procurement

The Department is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards, and enjoys the complete confidence of the public. To achieve these important public purposes, it is critical that Employees and Board members have a clear understanding of, and an appreciation for, the ethics in procurement. See DCH Policy No. 402, "Ethics in Procurement" for further guidance.

B. Gifts

Employees are prohibited from accepting gifts from any person with whom the Employee interacts on official state business. To the extent that gifts of nominal value are offered, (i.e., gifts with value of less than \$25.00), they may be shared with other members of the DCH. Exceptions shall include perishable items, such as a basket of fruit, which may be accepted and promptly placed in a common area of state property for sharing among a group.

Employees are allowed, however, to accept a gift on behalf of any Agency or the Office of the Governor or when ceremonial courtesies require such an acceptance. Upon acceptance, the Employee should transfer the gift to DCH, the Office of the Governor, or in the alternative, to a charitable organization on behalf of DCH or the Office of the Governor.

If a Vendor has a personal relationship with the Employee, a Gift that is unconnected with the Employee's duties at the DCH is not necessarily prohibited. In determining whether the giving of an item was motivated by personal rather than business concerns, the history of the relationship between the Vendor and

Employee shall be considered. However, regardless of the personal relationship between a Vendor and an Employee, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the Employee in the performance of his or her official duties.

C. Honoraria

Honoraria are payments to a professional person for services for which no fee is required. Honorarium excludes such things as a certificate or other token of appreciation, which has nominal value and may be accepted as a ceremonial courtesy. Employees are not allowed to accept honoraria.

D. Service on Boards

In general, Employees are restricted from serving as a corporate officer or director of for-profit or publicly held organizations. Notwithstanding the foregoing, each circumstance may be assessed on a case-by-case basis to determine if an actual conflict of interest exists, which would determine whether the Employee could provide such service.

Employees may provide pro bono services to non-profit organizations as long as such services do not negatively impact the Employee's ability to perform his or her duties effectively and with objectivity.

E. Dual Employment

See DCH Policy No. 411 for guidance regarding secondary employment.

F. Political Activities

See DCH Policy No. 416 for guidance regarding political activities.

G. Nepotism

The manner in which Family Members are employed in any organization may lend to an appearance of conflict of interest. The Governor's Executive Order Establishing a Code of Ethics for Executive Branch Officers and Employees prohibits an Employee from advocating for or causing the advancement, appointment, employment, promotion, or transfer of a Family Member to a position within the Department. Additionally, Georgia law restricts the Commissioner and Board members from engaging in that same activity wherein the salary of the Employee is \$10,000 annually or more.

In that the Department desires to assist supervisors in making equitable decisions regarding work assignments, promotions, performance evaluations, disciplinary

actions, and all other actions which have a direct impact on an individual's employment, the Department reserves the right to impose the following restrictions:

1. Family Members of individuals currently employed by the Department may be hired only if they will not be working directly for or supervising a Family Member.
2. If Family Members are currently employed, they cannot be transferred into a direct reporting relationship.
3. If the Family Member relationship is established after employment and there is a direct reporting relationship, the manager shall make the determination as to which Employee shall be subject to transfer, if such transfer does not adversely affect the business needs of the Department.

This policy shall in no means violate state and federal laws regarding discrimination on the basis of marital status.

VI. Lobbyists

Employees must ensure that any vendor who submits bids and/or responses to request for proposals, submits an application for a certificate of need, or seeks confirmation of status, letter of non-reviewability, or opposition has certified on forms prescribed by the Department that any lobbyist employed or retained by the vendor has registered with the Government Transparency and Campaign Finance Commission and made the appropriate disclosures.

VII. Reporting Requirements

Annual Filing by All Board Members

Each Board member is required to file an annual affidavit relating to the impact of official actions on the member's private, financial and business interests. This affidavit must be filed with the Government Transparency and Campaign Finance Commission by January 31 of each year.

B. Annual Filing by Board Members and Employees Who Engaged in Certain Business Transactions

DCH Board members and Employees must report, on a form prescribed by the Government Transparency and Campaign Finance Commission, an itemized list of business transactions with the State of Georgia or any state agency. This disclosure statement, containing the previous year's business transactions, must be submitted to the Government Transparency and Campaign Finance Commission no later than

January 31 of each year. A copy of this report should be submitted to the General Counsel.

Board members and Employees are not required to submit such disclosure statements if they have not transacted business or if such transactions include only those set forth in Paragraph IV(C)(1).

C. Annual Personal Financial Disclosure Filing by Commissioner

The Commissioner shall be required to file, on an annual basis, a financial disclosure statement, including all information contained in O.C.G.A. Section 21-5-50.

D. Report of Expenses and Fees

As a rule, all expenses for an Employee to participate in conferences, meetings and other activities on behalf of DCH shall be paid by DCH. Expenses include food, beverages, travel and lodging. In limited exceptions, a person or entity, on behalf of an Employee, may offer to pay or waive registration fees when such fees are attendant to the Employee's participation in a public meeting related to official or professional duties; provided, however, that in no event may such fees be paid or waived by a contractor, vendor, potential bidder or lobbyist. Fees are limited to those items that are directly associated with the business or professional duties and are not attributable to personal, social or recreational activities.

A report of such fees must be filed with DCH's Ethics Officer no later than thirty (30) days after the fees have been paid or waived. The report should include:

1. Name and address of the person paying the registration fees; and
2. The description and value of each registration fee.

E. Report of Gifts

If an Employee receives a gift on behalf of DCH or the Office of the Governor, the Employee must file a report with DCH's Ethics Officer no later than thirty (30) days after the receipt of the gift. The report should include:

1. Name and address of the person giving the gift
2. The date the gift was given
3. The monetary value of the gift
4. An explanation of the disposition of the gift

VIII. Guidance

In the event that a DCH Board member or Employee has reason to believe that a conflict of interest might exist in a particular circumstance, the Board member or Employee should seek guidance from the DCH Inspector General.

In those situations where a DCH Board member has in fact identified a conflict involving a matter before the DCH Board, the Board member should immediately recuse himself or herself from any discussion or voting on the matter. The withdrawal of the Board member from consideration of the matter should be entered in the minutes of the meeting of the Board and made a part of the permanent records of the Department.

IX. Mandatory Reporting

Any and every employee who has knowledge of any ethics violation is responsible for reporting such violation to the DCH Inspector General and the DCH Ethics Officer.

Good faith reports will be free from retaliation. Supervisors are responsible for reporting such violation and for forwarding any such report from any member of the supervisor's staff to the DCH Inspector General and the DCH Ethics Officer. Supervisors are additionally responsible for ensuring that the employees under his or her supervision are aware of and comply with the DCH ethical standards and policies.

Reporting suspected policy violations by others shall not jeopardize an Employee's tenure with the Department. Anyone reporting a possible violation of this policy must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation.

Any Department employee may report information, in good faith, concerning the possible violations of this policy in any Department programs or operations. No DCH employee will take action against, direct others to take action against, recommend personnel action against, approve personnel action against, or threaten another Department employee for questioning or reporting in good faith possible violations of this policy.

X. Acknowledgement of Policy

Each Board member and Employee shall sign an acknowledgement that he or she:

- A. Has received a copy of the policy;
- B. Has read and understands the policy or, at least, is aware of the policy and is accountable for compliance with it;
- C. Agrees to comply with the policy;
- D. Agrees to submit the Financial Disclosure Statement as required by this policy, if required.
- E. Agrees to the disclosure of business transactions with the State

ACKNOWLEDGEMENT

I, the undersigned, hereby acknowledge that:

- A. I have received, read, and understand the Georgia Department of Community Health,
Code of Ethics and Conflict of Interest Policy;
- B. I agree to comply with each provision of the Georgia Department of Community Health,
Code of Ethics and Conflict of Interest Policy;
- C. I am a Contractor.

CONTRACTOR

BY: _____
Signature

Date

Print/Type Name

*TITLE

* Must be President, Vice President, CEO or Other Officer Authorized to Execute on Behalf of and Bind the Entity to a Contract